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Standing Committee on Resources
Development.

Debates

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

FARM PRACTICES PROTECTION ACT

WEDNESDAY, DECEMBER 7, 1988

STANDING COMMITTEE ON RESOURCES DEVELOPMENT
CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)
VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)
Black, Kenneth H. (Muskoka-Georgian Bay L)
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Grier, Ruth A. (Etobicoke-Lakeshore NDP)
Marland, Margaret (Mississauga South PC)
McGuigan, James F. (Essex-Kent L)
Stoner, Norah (Durham West L)
Tatham, Charlie (Oxford L)
Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitution:
Villeneuve, Noble (Stormont, Dundas and Glengarry PC) for Mrs. Marland

Also taking part:
Miller, Gordon I. (Norfolk L)
Pelissero, Harry E. (Lincoln L)

Clerk: Mellor, Lynn

Witnesses:

From the Association of Municipalities of Ontario, Rural Section:
Brick, Doris, Past President, AMO; Reeve, Township of Ennismore
Abbott, Clarence H., Past President; Mayor, Township of Norfolk

From the Christian Farmers Federation of Ontario:
van Donkersgoed, Elbert, Research and Policy Director
Aukema, Henry, Treasurer

From the Niagara North Federation of Agriculture et al:
Wiley, Warren
Lepp, Arnold

From the Preservation of Agricultural Lands Society:
Hasler, James, Chairman, Land Use Committee

From the Ontario Federation of Agriculture:
Pyke, Brigid, President
Duncan, Donald, Chairman, Environmental Committee

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WEDNESDAY, DECEMBER 7, 1988

The committee met at 3:28 p.m. in committee room 1.

FARM PRACTICES PROTECTION ACT

Consideration of Bill 83, An Act respecting the Protection of Farm Practices.

Mr. Chairman: We are here to hear public representation on Bill 83, An Act respecting the Protection of Farm Practices. We have scheduled today, tomorrow and part of the time on Monday to deal with public representations, after which we will proceed with the bill clause by clause for debate and any possible amendments to it.

This afternoon we have a full agenda, and it has been agreed by everyone that the length of time that will be taken up by the presenters and in discussion with the committee will be half an hour.

RURAL SECTION (ROMA) OF THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO

Ms. Brick: I am the past president of the Association of Municipalities of Ontario. Clarence Abbott will be making our presentation for us. I have on my right the chairman of the rural section of AMO, John Newton; with us as well we have Ron MacDonnell, one of the vice-presidents; Mark Emery from our staff at AMO, and Ken Rose, who is the secretary for the rural section. We will try to keep ourselves to the time limits that have been put upon us.

AMO represents some 700 municipal councils in Ontario. We have five sections, of which the rural section is one. It is not uncommon in our organization that one section will take the lead in certain issues.

Bill 83, the Farm Practices Protection Act, has been studied thoroughly by our rural section. We do have a position. At this point, I will introduce Clarence Abbott, who will make the presentation on our behalf and we will try to respond to any questions the members may have afterwards.

Mr. Abbott: It is unusual for us to support legislation when we appear before committees. We have one or two minor concerns, but we like to think that, as an initiative of the Rural Ontario Municipal Association and AMO, we were able to influence some of the changes that were made from the first draft.

It is nice to see a piece of legislation that even a municipal politician like myself can read and understand. It is simple and straightforward, and does not have a lot of double-talk in it. I am sure that when you make the changes that we are suggesting, it will be almost perfect.

We only have two or three pages. I will read them, so I will not repeat myself, and those of you who have a copy can follow.

The Rural Section (ROMA) of the Association of Municipalities of Ontario welcomes the opportunity to appear before the resources development committee

of the Legislature of Ontario to comment on Bill 83, An Act respecting the Protection of Farm Practices.

By way of some background, I wish to advise that the Association of Municipalities of Ontario is the voice for some 700 municipal councils in Ontario, as Doris as said. The association is composed of five component sections based upon type of municipality, and the rural section is the largest of those and, of course, we think the most important. Mike may have some comments on that.

Within the AMO structure, sections of the association often take the lead with respect to certain issues, as we are taking the lead in this right-to-farm bill.

The Association of Municipalities of Ontario position: the association initially responded to the issue by issuing a report on November 1986 entitled AMO Report 86-16: Response to the Ontario Right to Farm Advisory Committee's Report. In that original response, the association favoured the introduction of simple legislation related to nuisance which would protect farm practices subject to a definition of "normal farming practices." The association also raised concerns with several issues identified in the original report, including opposition to a proposed farm practices protection permit system for severances and support for a Farm Practices Protection Board as an appeal tribunal.

The association was therefore very pleased to see the introduction of Bill 83, An Act respecting the Protection of Farm Practices, approximately one year ago on December 17, 1987. The association forwarded comments on this act in a letter dated March 17, 1988—I believe you also have that in your package—and further in a letter dated July 19, 1988. In the view of the association, Bill 83 reflects many of the association's suggestions contained in the response to the Ontario Right to Farm Advisory Committee's Report.

The resultant Bill 83 is a clean and simple bill which should prove to be effective in terms of protecting agricultural operations from nuisance claims.

As stated in the original letter dated March 17, 1988, the association is prepared to fully support Bill 83 subject to a number of suggestions which are listed as follows:

1. With respect to section 1 of the bill, the association requests that the definition of "person" be clarified, in that it is not made clear whether companies, such as corporations, are included in the current definition. The bill simply states that, "'person' includes an unincorporated association." For the purposes of clarity, the association is of the view that the definition should identify that companies, both incorporated and unincorporated, are included.

2. With respect to clause 4(1)(a) of the bill which deals with the duties and powers of the Farm Practices Protection Board, the association is of the view that this section of the bill should be amended in some way so as to provide latitude to the board to attempt to resolve disputes informally. The association is of the opinion that if a dispute can be resolved in an informal manner, this should be encouraged so as not to bog down the system with disputes which potentially could have been avoided.

3. With respect to subsection 5(1) of the bill, the association is

generally supportive of the intent but would like to see this section amended somewhat so as to make it clear that the first stop with any farm practices complaint is at the Farm Practices Protection Board. As suggested in the March 17, 1988, letter, perhaps the section could be amended so as to read, "where a person is aggrieved by any odour, noise or dust resulting from an agricultural operation, the person shall apply in writing, first to the board." Such an amendment merely serves to clarify the front-line position of the Farm Practices Protection Board in dealing with complaints, as opposed to going to court or wherever they may wish to go.

4. With respect to subsection 5(5) of the bill, the association is supportive of the intent of the section but would request that perhaps this section could be slightly amended so as to state strongly and more clearly that appeals themselves relate only to questions of fact or law or both. The insertion of the work "only" serves to strengthen the intent and may assist, to some extent, in avoiding frivolous appeals.

Additional comments raised by the association made suggestions as to the composition of the Farm Practices Protection Board and the desire by the association that such appointments be both municipally and rurally oriented. While realizing that this concern is beyond the scope of the bill itself, it was felt to be a concern worth mentioning to the committee.

On behalf of ROMA, the Rural Section of the Association of Municipalities of Ontario, we would like to thank the committee for taking the time to hear the municipal comments on this bill. In general, the association is supportive of Bill 83 subject to the comments mentioned and would hope that any amendments do not unduly delay the progress of Bill 83 through third reading and royal assent.

Mr. Villeneuve: Thank you very much, people from the Association of Municipalities of Ontario, ROMA.

In regard to your comments pertaining to "person," it should not be a problem. "Normal farm practices" is of great concern to me. Several years ago I questioned the minister as to an example: the wind is blowing towards the town, you happen to live next to the town and you are out spreading manure. The minister stated that in his opinion that was not a normal farm practice, to be spreading manure whenever the wind was blowing in the direction that would bring the odour towards a populated area.

1540

Mr. Dietsch: When did he say that?

Mr. Villeneuve: I do not know why he said that.

Mr. Dietsch: When?

Mr. Villeneuve: During his estimates in 1985 when this—

Mr. Tatham: How strong was the wind?

Mr. Villeneuve: That is the question. It very much concerns me that this type of bill—I want to see lots of latitude in it—cannot be putting barriers and certain limitations on farming operations. In my opinion, if the crop is off and the manure pit has to be emptied, I really do not care which way the wind blows. Would you comment on that?

Mr. Abbott: My first response would be this: Were I sitting on the board, being a farmer and knowing something about spreading manure, both as a farmer and, since, as a municipal politician—

Interjections.

Mr. Abbott: To get back to the issue at hand, I think that is one of the reasons we suggested that we have people who are rurally oriented, who are familiar with farming and who can sort the wheat from the chaff and know when it is a normal practice and when it is not. I do not believe you can set that down in law. There have to be some judgemental factors taken into account.

Mr. Villeneuve: Local interpretation and the makeup of the board are most important. We have lobbied for a majority of people who are actively or have been actively involved in the business of making a living from farming. Appointments are open to ministerial discretion. I would like to see as part of this bill that agriculture would be first and foremost.

Mr. Abbott: As an addition to that, this gives me an opportunity to bring up a point. In one of the letters, at the bottom of the letter dated March 1988, it says: "that the board members be municipally and rurally oriented; that the rural section, ROMA, of the Association of Municipalities of Ontario and the Ontario Federation of Agriculture"—and in addition to that the Christian Farmers Federation of Ontario, which was just an omission here but was intended to be there—"should be given the opportunity to make nominations for membership to the board at the very least."

I think we covered that in the letter. Hopefully, the minister will take heed of that.

Mr. Villeneuve: Would you go so far as to insert it as part of the legislation?

Mr. Abbott: I really do not know. I guess that would be dependent upon those particular organizations operating under the same-name requirement in the legislation. I would think that if that was done in the original sense— Committees have a tendency to continue along the same structure under which they were established, I think. I really do not see it as a problem. We could do that. I guess we would have no objection to it.

Mr. McGuigan: I just want to put on the record that I dissociate myself from the remarks of Mr. Villeneuve that he does not care about his neighbours. I am a farmer. I spread manure. I have bird-bangers. I spray. I do not do that indiscriminately. I look at the direction of the wind, whether it is affecting my neighbours. My neighbours are other farmers and there are also nonfarmers. I care about my neighbours and I completely dissociate myself from those remarks.

Mr. Villeneuve: I cannot let that go unchallenged. Mr. McGuigan, I know, comes from the Chatham-Kent area where the growing season tends to be a little bit longer. I tell you, in eastern Ontario and in northern Ontario, when the time is right to do something, you do not have a lot of time to do it. I wish I had the kind of climate that you have down here, but there are times, however, when you have to go about your business.

Mr. McGuigan: Do you ever tell the birds that are robbing the cherries about timing? They do not care about the timing. There is only a short time to do that. There is only a short time to spray.

Mr. Villeneuve: Are you saying you would put up a bird-banger, then, if it indeed was causing concern to your neighbour?

Mr. McGuigan: I do not point them at my neighbour.

Mr. Villeneuve: Oh.

Mr. Chairman: Are there any comments or questions? If not, thank you very much.

Mr. Miller: I would just like to welcome the mayor of the township of Norfolk who is here on behalf of the Rural Ontario Municipal Association. As the member for Norfolk, I am not part of the committee, but I just dropped in to kind of keep one eye on the proceedings. He is a pretty good spokesman for his area and for the province of Ontario, so I welcome your worship.

Mr. Chairman: I should also have pointed out that Mr. Miller is the parliamentary assistant to the Minister of Agriculture and Food (Mr. Riddell) so he has a particular interest in this matter.

Thank you very much for your appearance before the committee. We do appreciate it.

Mr. Abbott: Thank you for the opportunity. We will be glad to assist in any way, especially when we come to the food land policy. We have not gone away.

Mr. Chairman: I see Mr. Miller making notes.

The next group to appear is the Christian Farmers Federation of Ontario. Are they here now? I know we are a little early.

Mrs. Stoner: Before we proceed, these recommendations for amendment, in the procedures, when we are doing clause-by-clause, will you have the recommendations from the various associations side by side with the various sections and the recommendations? This is just as a format question.

Mr. Chairman: That is a good question, Mrs. Stoner. We do not have a researcher with us at this point. If you think that would be appropriate, we could probably have one for the next couple of days, just to get us caught up on that.

Mrs. Stoner: I would just like to have it as a package so that if, for instance, the Rural Ontario Municipal Association and the Christian Farmers and a whole bunch of people are suggesting that there be recommendations to section so and so, we can put all of that together in a package and then review it, as a package. I think it would help.

Mr. Chairman: Right.

Mr. Villeneuve: If some of those motions are sponsored by the Tories, would you still support them?

Mrs. Stoner: Common sense is appropriate.

Interjections.

Mr. Chairman: It is happening right now. We will see what is

possible, although we do hear representations right up to the minute we start the clause-by-clause, right? So it is a little difficult, but I personally agree with you. I like the idea of having someone who can bring most of them to us, even it was just today's and tomorrow's, and have that ready for us on Monday.

Mrs. Stoner: Then we will know the sections and the various recommendations. We will have them all in a package.

Mr. Chairman: Yes, it is not all that complex. I agree.

Mr. Villeneuve: I think we are working in a very tight time frame and we certainly want this legislation to proceed prior to recess and that is a week from this Thursday.

Mrs. Stoner: I think it is simpler to deal with them that way.

Mr. Chairman: I think that would speed up the process. That is a good suggestion.

All right, can we proceed? Will you introduce yourself and your colleague?

CHRISTIAN FARMERS FEDERATION OF ONTARIO

Mr. van Donkersgoed: My name is Elbert van Donkersgoed. I am research staff with the Christian Farmers Federation of Ontario. Henry Aukema is with me. He is one of our directors. My apologies that our president is not with us, but it is his birthday today, and he decided that, after having our convention and a number of other things on the go last week he just had to stay home and celebrate his birthday.

Mr. Chairman: Good for him. We have a brief from the farmers which all members have.

Mr. van Donkersgoed: Yes, we have prepared a short brief. For those members of the committee who do not know us well, or who have not taken the time to know us well, attached to the brief are a couple of appendices with information about our organization. We are a general farm organization, with some 625 members across the province, organized into 21 district associations. We tend to be choosey about the issues we get involved in. Being a confessional organization, we tend to get involved in the issues where values are important. We have some thoughts on this one, and we appreciate the opportunity of joining you here this afternoon.

1550

What you see before you is the result of the discussions that have taken place within our organization. Rather than reading all of it, I will skip right to the meat of what we want to say about the Farm Practices Protection Act, and that will start me at point 4. I will read the brief from point 4 on.

The Christian Farmers Federation of Ontario supports the general direction set by the Farm Practices Protection Act. We share the concern of many other farmers that nuisance complaints about farm practices are a growing concern for farm families. We believe a two-part approach is necessary to have strong and co-operative rural communities in the future. On the one hand, we need protection from nuisance complaints, and on the other, we need clearer direction on what can be considered a normal or reasonable practice.

Changes in rural Ontario make protecting reasonable farm practices urgent. Scattered rural development is out of control across the province and the present administration, in our view, is doing nothing about it. In the early 1980s, there were 2,000 to 3,000 rural severances per year across Ontario. Last year there were 9,000, and this year there will be more than 11,000. It is obvious to us that policies such as the Food Land Guidelines, originally designed to preserve our food land, our agricultural infrastructure and our rural communities, are being implemented as nonfarm development policies by this administration.

In this context, we welcome the Bill 83 initiative to provide protection for reasonable farm practices. It is, in our view, a Band-Aid approach to a major problem, but a necessary Band-Aid. It is not a substitute for good rural planning, but since good rural planning is obviously not a commitment of the present administration, we welcome Band-Aid assistance.

We have had an opportunity to review the changes to Bill 83 as proposed by the Ontario Federation of Agriculture. Here, we are referring to a document the federation of agriculture circulated this summer. It has been very helpful to us for focusing our attention. We agree with their rationale that there is no need in subsection 2(1) to limit the scope of the legislation in any way. We request that the limitation "in respect of that agricultural operation, does not violate"—and then there follows a whole list of acts—be deleted because it limits the scope of the legislation.

We also concur with the OFA's suggestion that the phrase, "reasonable farm practices" is more appropriate than "normal farm practices." I hope they have not changed their mind about that in the meantime.

We have a concern about the makeup of the board to be established. It is our experience that one of the better functioning boards is the Farm Income Stabilization Commission of Ontario. The farm community has a high level of confidence in it. The legislation establishing that commission calls for three of the members to be appointed, based on nominations from farm organizations.

In our view, up to 50 per cent of the members of this board should be so appointed. We further agree with the OFA's suggestion that the number of board members should be larger and that a quorum should be increased to three. We are very conscious of the fact that the decisions of the board will be precedent-setting and, over time, will become a guideline for reasonable farming practices.

We endorse the OFA's proposed revisions of subsection 5(1) to the effect that the board will clearly be the first forum for dispute resolution re agricultural nuisance issues. Otherwise, farm families may end up with two challenges to their practices, one to the board and one to the courts.

We have noted the OFA's proposal to establish fines for those who do not comply with orders of the board. We do not think the board itself should have the power to levy fines. Failing to comply with an order should certainly lead to a penalty, but it should be clear that the process does not involve the board.

We are concerned that the board might operate from one central location, such as Toronto or Guelph. It should be specified in the act, in subsection 5(3), that hearings will be held close to applicants and respondents. Probably the best example of that happening now is with the farm products appeal tribunal. It moves its hearing location from time to time around the province

as necessary, depending on who is appearing before it. We think the board should be given an independent mandate to develop and promote reasonable farming practices. The board should have the power to draft guidelines for reasonable farming practices, to hold public hearings on them, and to use them in its determination for specific applications. It should also be able to advise farmers before a confrontation arises.

In conclusion, we see Bill 83 as a step in the right direction to relieve growing tensions in rural communities. The bill, however, does not cover all farm practices that are of concern to rural residents. For example, pesticide drift, trespass, dogs, fencing disputes or chemical residues in various water sources; all of these together require a further and perhaps an even more urgent initiative. Bill 83 does not get at the root cause of the growing tension, scattered rural housing. Growing tension is unavoidable if the present pattern of rural development is allowed to continue.

In the long term, the solution lies in a fundamentally different approach to Ontario's development than at present. The 1986 report of the Ontario Right to Farm Advisory Committee provided excellent guidance for the future on pages 33 to 35. Ontario needs to establish agricultural preserves and land trusts that are linked to existing farm support programs, especially those that encourage stewardship and conservation. Thank you for your attention lady and gentlemen.

Mr. Chairman: Thank you Mr. van Donkersgoed, I just have one question. On page 1 of your brief, under changing rural Ontario, point 6, you say "the Food Land Guidelines...are being implemented as nonfarm development policies." I do not really know what you are getting at there.

Mr. van Donkersgoed: My impression, and our growing impression, is that the food land guidelines are not doing the job they were set out to do. They were adopted 10 years ago. The pattern of development in this province at that time was that if you built 100 houses, 85 of them were built on food land. That is the same today. It has not changed one iota, even though we have the food land guidelines.

What has happened, as we understand it, is that everybody out who is interested in developing something has simply learned how to see this as a development tool, answer all the questions that are in the food land guidelines, and the food land guidelines then become an assistance to getting a development approved. We see many proposals going forward with the questions raised by the food land guidelines appropriately documented. There is no preservation of food land happening as a result.

Mrs. Stoner: Following somewhat in that area of discussion, in point 17 you suggest the establishment of agricultural preserves and land trusts. Do you have specific projects in mind? Could you expand on that a little bit?

Mr. van Donkersgoed: As a federation, we have not developed specific projects. The concept that has often been discussed among us is the idea that we need to make a stronger commitment to what is agriculture and what is not. Then the stronger commitment needs to be defined positively rather than negatively.

Right now much of the planning process is negative in the sense that it puts a restraint on what you can do with your land. It is our view that there should be a positive side to it so that if your land is zoned agricultural, then it should be tied to the idea, for example, that if you are going to be

part of a property tax rebate and if it is an agricultural property tax rebate, then indeed your land should be zoned agricultural or it should be designated agricultural in an official plan or it should be in the agricultural reserve. In order to benefit from significant public programs, a farm family should be willing to have its land in an agricultural preserve. Otherwise, the public's contribution may not have long-term impact, if shortly after the public makes a substantial financial contribution—

Mrs. Stoner: You are talking about a permanent agricultural designation in the planning sense then.

Mr. van Donkersgoed: Yes. We would be quite prepared to discuss linking other policies, such as stabilization of property insurance, to the willingness—that would add a positive side to being in an agricultural preserve as opposed to a limiting side.

1600

Mr. Villeneuve: Thank you very much, gentlemen, for your presentation. As you know, subsection 2(1) says, "A person who carries on an agricultural operation and who, in respect of that agricultural operation, does not violate," and then it goes on to mention "any land use control law...the Environmental Protection Act...the Pesticides Act." In other words, these are all built into this legislation. I believe that would look after many of the concerns that you have expressed in the conclusion.

My question to you gentlemen is this: Can one law apply across this province or should we have the province maybe broken up into three, five or six regions? Mr. McGuigan tells me that the bird-bangers are not aimed at his neighbours. I do not think anyone aims bird-bangers at their neighbours. I would hope not. But there are times when the manure has to be spread, whether it is in Chatham or in Stormont, Dundas and Glengarry.

I would like your comments, as people who farm very intensively, the Christian Farmers Federation of Ontario, in the area that you do farm. You are kind of in central Ontario. The reeve of Lochiel who is here today could tell you that we have some problems that are specific to eastern Ontario. We certainly have problems that are specific to other parts of Ontario. Can one bill look after the whole thing or should we look after it in different regions?

Mr. van Donkersgoed: First let me point out that we are scattered across the province. We have a district association in Thunder Bay and another one in Rainy River.

Mr. Villeneuve: And one in my riding of Stormont, Dundas and Glengarry.

Mr. van Donkersgoed: And one in your riding.

Mr. Villeneuve: They are excellent entertainers, as I witnessed last week at your annual meeting.

Mr. van Donkersgoed: I would have a lot of hesitation to try to suggest that there are going to be different practices. I would hesitate to suggest that you should look at allowing different practices in one part of the province than in another. I think the problems that we have are different, I agree with you, in one part of the province than they are in another because

in some parts of the province agriculture has become, let me use the phrase "more industrialized," than in others. It is the industrialized type of agriculture that tends to have the highest potential of causing a nuisance.

If you are in an area where practically every enterprise is somewhat intensive, somewhat industrialized, then we all have to put up with a little bit of the other fellow's nuisance, and it is less likely to result in complaints. But if you have one very intensive enterprise, even within moderate-scale part-time hobby farms, that can cause much of the friction. That can cause much of the nuisance.

Agriculture is not cohesive, I agree. Agriculture is very diverse and farmers themselves, especially when they know it can be done differently, would be the first to raise the issue of whether or not some nuisance has to continue. If it can be done better, I hesitate to say that we should allow a different standard in one part of the province than in the other.

Mr. Villeneuve: Maybe this is not the legislation. Maybe the Food Land Guidelines pertaining to severances and all of the rest of it should be treated somewhat differently. I know there are different problems in different areas. So you would say that this should be applied in a uniform fashion right across the province, regardless of whether it is in Thunder Bay, Glengarry or Kent?

Mr. van Donkersgoed: If I were to take the very simple and innocuous example of spreading manure, I would not consider it reasonable if some people went out of their way to spread manure when their neighbour had the family over for a barbecue and it was right next door to the fence. I would hope that every farm family needing to spread manure would avoid that field for that particular day. To not do so I would consider has some measure of unreasonableness to it. I think that would be true from one part of the province to the other.

Mr. Villeneuve: This may well be problems that are farmer-to-farmer related problems, as opposed to the so-called intruder into rural Ontario who happens to live on a one-acre parcel. We may have more problems with farmer-to-farmer than we will from the nonagricultural, nonfarming residents.

Mr. van Donkersgoed: My experience is that there are more farmer-to-farmer problems than farmer-to-rural-resident. Rural residents, in fact, often do not know that it can be done better, but farmers do.

Mr. McGuigan: My question relates to the reasonableness factor you have brought up. I would like to give an example from my own experience. One of my neighbours is a farmer with a grain dryer. As you know, grain has to be dried at a proper time. Except for some condition where he might have a bad harvest situation, or is in a bind for time, he closes his grain dryer off at about 11 or 12 p.m., so that I, my wife, our family and our neighbours can sleep. I consider that quite normal farm practice for him to close it off at 11 p.m.

There is an article here in the paper saying that, if it was normal farm practice for everyone in the area to run their dryer all night long, then he would be quite all right to run his all night long, in spite of the fact that I cannot sleep under those circumstances.

Would you think that it was unreasonable, except under unusual circumstances which any farmer would recognize and would be willing to give in

to for his neighbour, to run a dryer 24 hours a day, as a steady or normal practice?

Mr. Aukema: I think it is reasonable that something such as a farm dryer is run 24 hours a day, but there are things that can be done with the setup. You could install baffles to control the sound. I think those are things that would have to be looked at.

Mr. McGuigan: Of course, it is the noise that I am complaining about. I would not complain about him running it. But, if I cannot sleep—

Mr. Aukema: The noise can be muffled to a large extent.

Mr. van Donkersgoed: If someone is going to run it all night, it is reasonable to suggest that he muffle that noise during the night. It is a perfectly legitimate request to make.

Mr. McGuigan: He can run it any time, as long as it is not bothering me. The question is not whether he runs it; the question is whether or not his neighbours can sleep.

Mr. van Donkersgoed: I think it is quite appropriate for you to be suggesting that under those circumstances something needs to happen, other than simply running it 24 hours a day. But I would not say that the solution is to shut it down right away. There may be other solutions.

Mr. McGuigan: Fortunately, my neighbour is considerate of his neighbours, but I would be concerned if there were a person there who did not give a damn.

Mr. van Donkersgoed: I think that is the reasonable thing to do.

Mr. McGuigan: If I could not sleep, I might decide that he could not sleep during my bird-banging season either.

Mr. Villeneuve: You shut it off at night, don't you?

Mr. McGuigan: Have you ever heard of night owls? Or mourning doves?

Mr. Chairman: Are there any other comments or questions to the Christian Farmers Federation of Ontario? If not, we thank you very much for your appearance before the committee.

There are two other presentations this afternoon. One is from the Preservation of Agricultural Lands Society, PALS. I do not think they are here yet, are they? No? And the other is from the Ontario Federation of Agriculture. I do not think that they are here yet either. It is very unusual for a committee of the Legislature to be running ahead of time. This is a precedent-setting day.

Mr. Dietsch: There must be something wrong with us.

Mr. Chairman: Yes.

Mr. Dietsch: Is OFA not here as well?

1610

Mr. Chairman: No. Brigid Pyke was to make a presentation.

Mr. Dietsch: There was a brief circulated with respect to the comments I raised on Monday in the committee with regard to the Niagara North Federation of Agriculture. They are present in the audience. If it would be the wish of the committee, rather than just sit and wait for the next presenter to come in, they would have 20 minutes until the next presenter, if that would be appropriate, Mr. Chairman.

Mr. Chairman: I think it would be a good suggestion, if other members of the committee are in agreement.

Mr. Villeneuve: I have no problem with that, other than I want to comment and read briefly from the presentation of Dorothy Middleton, from Stormont county, the Women for the Survival of Agriculture. There is a rather strange case occurring down there. Whenever we have an opportunity, I want to put on the record some of the problems one particular individual is faced with, such as noise from cowbells.

Mr. Chairman: Okay.

Mr. Dietsch: Warren Wiley is in the audience, along with Arnold Lepp, if they would like to come and make their presentation of the brief that was circulated.

Mr. Chairman: Sometimes things work out in strange ways. Mr. Dietsch made a very strong presentation to have you appear before the committee. We were really having difficulties, we thought, squeezing everybody in. We are glad you are here.

NIAGARA NORTH FEDERATION OF AGRICULTURE ET AL

Mr. Wiley: Thank you very much. We really appreciate it because we think our situation in Niagara is unique. We in Niagara have probably had more development, in the choicest areas for fruit growing. We have had development occur over the years. When development control came in in the 1970s, it was already too late.

We have a situation where the agricultural holdings are small and they are bordered by urban development. By our own calculations, we estimate that each severance, if a person desires to find fault with that farm operator, affects 40 acres of land surrounding that severance as far as the use of bird-scares and other equipment is concerned. The one we are the most concerned about is the Saunders case, which is a bird-scaring problem that has been going on for about the past three years. It finalized in a settlement this year. It went to the Environmental Assessment Board and, after two days of hearings, we arrived at a settlement.

The result of that really did not give us any protection. We are still in a situation. In fact, we have another gentleman with us who is on the point of receiving a court order. They have already notified him that he has exceeded the limits. I would assume there will be a court order coming. His is a bird-scarer problem as well.

It seems to us that when lands are zoned agricultural, and when you consider the size of the farms in the peninsula and realize that severance can affect the 40 acres around that land, we have a tremendous amount of our land that is sterilized in the peninsula already. It is some of the best land, the land that is capable of growing tree fruits.

We are vitally concerned about this and we looked on Bill 83 as a saviour. Then when we became more familiar with it, we were disappointed and we are here in the hopes that you might strengthen Bill 83 so it is of benefit to the agricultural industry in the peninsula.

The Ontario Federation of Agriculture is attempting to pick up the bill for the legal costs we had in the Saunders case. We have not enough money to meet the cost, but the total cost of the legal fees amounted to $18,000. This was based on the fact that Mr. Saunders's bird-scaring devices were making more than 70 decibels of noise at the property line. I think I am probably talking to you at 80 or 85 decibels. Seventy decibels of noise is a hard-covered hymn book dropping three inches to a linoleum floor.

That level is not practical when you consider irrigation equipment, crop dryers, wind sprayers, concentrate sprayers or even a farm tractor. I do not think it is realistic at all. Even a cow calling her calf exceeds that limit, as do bluejays, crows, even a door closing in the house. As a result of being involved in this case, I have become very sound-conscious.

We feel that the right-to-farm legislation should not accept the Ministry of the Environment's standards of 70 decibels or other standards without justification or reason. We were concerned when the local farm paper came out and Bill 83 was first announced. The Ministry of the Environment stated at that time that it did not think it would involve Bill 83 in many of its cases, because where there was a clear case of exceeding ministry limits, they would deal with it directly. It would not be referred to this committee.

We do not think that the average farmer is equipped to go to court against the government. Our experience with this $18,000 bill is that the average farmer cannot afford that. We think, as was suggested earlier, that compromise and understanding will go a long way towards solving many of these situations. We believe that all complaints should be referred to this new board under Bill 83. The board can pass complaints on to the Ministry of the Environment if it feels there is justification. We do not wish the right to pollute. We wish for the right to farm. We want the right to farm. We want to be protected. We have a large investment. Today you do not buy the farm, you do not buy the machinery and you do not plant the farm out without spending a lot of money. You should have some sort of protection.

We are asking that you consider all these points, and that when you appoint this committee, people who have an understanding of agriculture be at least well represented and that they be able to make decisions with the knowledge and an understanding of agriculture.

I think that the farmers have always believed that the Ministry of Agriculture and Food was on their side, if they were following normal farm practices. We found out in this McClory and Saunders case on bird-scares that in order to get expert witnesses it was necessary for us to subpoena the agricultural representative and his field man. They participated in our various meetings with our lawyer before the court case and it was quite a surprise to us when they said that they would appreciate being subpoenaed. They turned their subpoena fees back into the Saunders fund, which we appreciated.

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We were told by the representatives of the Ministry of Agriculture and Food that they did not want to be identified as being on the other side. They did not think that one arm of government should conflict with the other. I can

accept this to a point, but it is an agriculturally identified area under the regional plans. I think they should have the first opportunity to speak up.

That pretty well covers what we have in the brief.

Mr. Chairman: Thank you. Are there any questions from members?

Mrs. Stoner: First of all, do you have a specific recommendation on decibels, what you think would be appropriate, having monitored them yourself for a while?

Mr. Wiley: Do you understand decibels?

Mrs. Stoner: Yes, I do.

Mr. Wiley: Okay, a lot of people do not. When you go from 70 to 80 decibels, it doubles the noise. From 80 to 90 doubles it again. I will tell you that to start with.

When you consider the average home today and the conditions that people live under, most people have air-conditioning units. Where you have a house that is closed up with an air-conditioning unit running, I do think that a bird-scarer at the property line is going to be noticeable at 100 decibels. If you are in the backyard and you are having a barbecue, you are probably thinking of 90 decibels.

Mrs. Stoner: The other question is, you have heard the other two presentations and their various recommendations. Can you comment on those? Do you have specific recommendations on how the board should be made up or on various aspects that the others have commented on?

Mr. Wiley: I think we want a board that has understanding and fairness in it. We make the point in our brief that if we cannot afford to fight government, government has to be fair. I think that is a reasonable conclusion. We support the OFA position. The only difference that we have with the others is that we have had the experience. We have had three years. During that three years, that farmer harvested only the crop that he was able to salvage. As a result of that, the income tax department is coming down hard on him because the last three years have been unprofitable. They are going to reclassify him as a hobby farmer. He has it under appeal, but there is $7,000 worth of expenses that he has put in his income tax that they are questioning.

You can see that one thing leads to another. It has been a rough experience for the gentleman and his wife. They have had a lot of stress and strain. This legislation is very important.

Mrs. Stoner: Hopefully, it will help to make sure that those situations do not arise again.

Mr. Dietsch: Supplementary to Mrs. Stoner's question, let me clearly understand. You said that not only did these people go to court with respect to the so-called noise pollution but also they have been penalized with respect to their farm being put into a hobby farm designation.

Mr. Wiley: Yes.

Mr. Dietsch: The same individual.

Mr. Wiley: Yes.

Mr. Wildman: I am sorry I was late. I had another meeting. I would like to know two things. First, do you believe the bill, as it is currently worded, will prevent another farmer's having to go through what the Saunders experienced?

Mr. Wiley: No. It does not protect agriculture at all. As I mentioned earlier, there is a gentleman here—they have not laid the charges yet, but they have identified him as exceeding their limits. They do not identify their limits in this action. Now, in the Saunders' case, they did identify the limit.

Mr. Dietsch: For clarification, that is the other brief that has been presented to the committee, which Mr. Wiley makes reference to.

Mr. Wildman: Okay. We are going to hear from the OFA as well. I just wanted you to clarify that in terms of your understanding.

Mr. Wiley: Yes.

Mr. Wildman: The ministry and the minister have made a great deal of the 70-decibel level, for instance. The Ministry of Agriculture and Food and the Ministry of the Environment are currently involved in some kind of a review of noise pollution requirements regulation. I do not know what that is leading to, but are you aware of that kind of a review being carried out? Have any of your people been consulted, either by the Ministry of the Environment or the Ministry of Agriculture and Food?

Mr: Wiley: No.

Mr. Lepp: Are you referring to this protocol of understanding then?

Mr. Wildman: Yes.

Mr. Lepp: Between the two ministries?

Mr. Wildman: Yes.

Mr. Lepp: We have had a meeting in our area regarding that. That was an assurance in reference to Bill 83 that other things could be implemented to our benefit with this protocol of understanding, but it has not been implemented in Bill 83, from what we have read. The point in Bill 83 that Niagara North is underlining is the strengthening of the power of the Farm Products Protection Board by requiring complaints to be heard by the board before civil action could be taken. That is what our experience has made us believe should happen.

Mr. Wildman: Yet, you understand that the bill, as it is currently drafted, does not, of course, override the Environmental Protection Act?

Mr. Lepp: No, that is true. We still believe that it has the potential, with slight modifications, to address the issue. We do not want to see this whole bill defeated because of some changes that should be made.

Mr. McGuigan: With reference to the Ministry of Agriculture and Food representatives testifying, I can only offer my opinion of it. I think they probably did that in order to present themselves to the court as believable

and as being unbiased. I do not think that would reflect an attitude that they have as far as agriculture and agriculturalists. I think that would be the reason behind—I guess when the minister is here, perhaps someone can question him on it—but I would think that would be the reason for their acting that way.

From my own understanding, and I have spent a lot of time in the orchards, first as a kid with a rifle, then a shotgun and bird-bangers and noise-makers. I have tried just about everything there is.

Mr. Wildman: That was inside your house.

Mr. McGuigan: My wife might have something to say about that, Bud. The thing that seems to work with starlings—and it is largely starlings and blackbirds because with robins you practically have to go out and hit them with a stick to chase them off, as you very well know. I have observed that the noise-maker is effective where a flock of birds is coming in; they have set their wings, they have gone into a glide and a banger goes off, they will start flapping their wings again and go beyond.

If they actually land, certainly in my experiences of many years, even a banger does not put them out if they are in there feeding. The point I am coming to is that I have never found it to be of much use to have the bangers surrounding the orchard in such a way that they are on the line fence and perhaps bothering the neighbour. They are just as effective in the second row where the trees themselves give quite a lot of protection and yet the noise still goes up there and catches that flock that has set its wings and is about to land and gobble up your crop.

What I am wondering is, in this particular case, where were those bangers set? Were they actually out beyond the last row of trees along the boundary?

Mr. Wiley: During the past three years, the Ministry of the Environment pretty well dictated the location of the bird-scarers. It came up with the idea that, to be more effective, it would be good to put a bird-scarer directly behind the complainant's house and build a sound barrier between it and her house. This was used for the past two years. It was not the choice location the Saunders family would have had.

When you build a barrier there is a bit of a problem. If it is a permanent structure it limits your access with the sprayer, the trailers for drought, the fruit and so on. It was built on the headland. This would have been about 150 feet from the back lot line. There is a treed gully that runs down between her lot and the—

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Mr. McGuigan: For clarification, what kind of barrier would this be?

Mr. Wiley: The barrier was about eight feet high, made out of six sheets of five eighths plywood.

Mr. Chairman: We should move on. Did you have one question, Mr. Villeneuve? We could then move on to the next scheduled group.

Mr. Villeneuve: I would like your opinion, as people with some experience. Section 2 says that farmers are subject to land use control law,

the Environmental Protection Act and what have you, which is exactly where your problem is. This legislation does not solve your problem at all.

What we have to do in a particular area such as yours— That is why I put out to the Christian Farmers Federation of Ontario the fact that maybe in that area—and maybe the board can look after this, I do not know—it is the normal way of operating. If you need bird-bangers, you need bird-bangers. It may well be that the Environmental Protection Act, as it applies to farmers, has to be amended to some degree in certain areas. That is where I have some difficulty in interpreting a law for a large province like we have, which is very diversified.

Could you comment on that a bit? I am just thinking down the road. If we go to the board in charge of enforcing farm practices and it makes a decision that you are operating in a normal fashion, and the complainant does not like this and goes beyond into the courts of the land, then you are back to the problem you have today. You have simply given yourself six months' more discussion. What do you see as a possible solution?

Mr. Wiley: The Ontario Federation of Agriculture recommends that this bill not be subject to those acts or to the municipal acts. We accept that and think that would be a wonderful solution, but we do not think the general public would choose to go quite that far.

We believe in our agricultural industry. We believe we should have the right to farm but, as I said earlier, we do not wish to have the right to pollute. The problem is identifying at what level it is pollution. Pollution is identified for the environmentalists at a different level than it is for the farmer who is carrying on agriculture.

It is a bit of a problem. I think it really takes a board with understanding and knowledge that is able to make a judgement. I think that each case will be almost unique.

Mr. Chairman: Thank you very much, Mr. Wiley and Mr. Lepp, for your appearance. We are glad we were able to work it out, that you could speak to us.

Mr. Wiley: We sure appreciate this opportunity. I would like to add that our brief was supported by the Niagara North Federation of Agriculture, the Niagara South Federation of Agriculture which is in the Niagara Peninsula, the Niagara Peninsula Fruit and Vegetable Growers, the Ontario Tender Fruit Producers' Marketing Board and the Ontario Grape Growers' Marketing Board. That is most of the farmers from the Niagara Peninsula.

Mr. Chairman: The next presentation is from the Preservation of Agricultural Lands Society. James Hasler—I hope I am pronouncing that correctly—is chairman of their land use committee. Mr. Hasler, welcome to the committee. Members have a copy of the PALS brief. It looks like this. Please proceed.

PRESERVATION OF AGRICULTURAL LANDS SOCIETY

Mr. Hasler: All right. Thank you for this opportunity to address you. We feel this is quite a question, and the Preservation of Agricultural Lands Society welcomes this move to protect farmers in their pursuit of a living. We note that many other jurisdictions already have such legislation in place and we urge fairly quick action in Ontario. Although this particular set

of words may not be perfect—it is always open to comment—it is certainly better than nothing, which is what we have now.

One of the important concepts this act embodies is the recognition of the farmers' right to exist. For far too many years, farming has been seen as an interim land use until some urban demand came along. This has been reflected in the complaints from exurbanites who have moved to the country of their own free will and then began objecting to the industrious activity of the farmers around them.

Although there have been only a few court cases so far, there have been many instances of simple harassment, ranging from farmers being awakened at night by anonymous phone callers angry about being awakened by tractors at dawn, to Ministry of the Environment officers who come out from the city and wander around the farm. This harassment that goes on is widespread and it is very discouraging to farmers. It is as simple as that.

Make no mistake: Farming is important to Ontario. Currently, some 94 urbanites are dependent on each farmer for their food, and 25 per cent of our jobs in the economy are based on agriculture. All of this fairly important activity is based on five per cent of the land. Farming cannot move elsewhere, but urban uses can. That includes houses.

PALS recommends that Bill 83 contain a strong statement that farming is the priority use for class 1 to class 4 land and that farmers are to be protected in pursuing their livelihood. This is not to be construed, though, as a licence to pollute. We feel that farmers tend to be more aware than the average citizen of the need to keep the water clean and the soil healthy. What they need if they are to practise good land stewardship is the assurance that they will be there a long time.

Some of the current so-called normal farm practices are aimed at heavy but short-term crop production. We suggest the use of "reasonable" in place of "normal" to encompass changes that may come along. For example, the use of manure instead of chemical fertilizers might come back. That would entail some odours, but it is cheaper for the farmer and it is better for the land in the long run.

It should be noted that many reports indicate organic farming is more profitable than so-called "normal" farming. This will likely lead to thousands of farmers going to unconventional techniques. As long as they are not harmful to the environment, there should be no hindrance.

As far as the nonfarm dwellers are concerned, they must realize that farming is an industry and the needs of the business must take priority over exurbanites' enjoyment of a quiet countryside. In that regard, it is important that the board have members that are aware of the mechanics of farming. The board should also be available to determine if new techniques will be acceptable before any complaints are received. These two points are not currently in the act.

We also suggest that subsection 5(1) be changed from "the person may apply in writing to the board" to "shall apply in writing to the board" and add "no proceeding may otherwise be commenced in regards to that nuisance until such time as all rights and remedies created by this act have been exhausted." This change will ensure that the board is utilized and not bypassed by complainants. There should also be a provision for the board to offer technical assistance to farmers where changes are necessary.

Also, the board should be given some teeth. As presently drafted, people could ignore an order from the board. This would be a farmer, I guess, but if there is one doing something wrong, he should be forced to change. We suggest a first-offence fine of about $500, rising to about $5,000 for each subsequent offence.

There also should be some companion legislation to this to make it really work. We feel it will require legislation to ensure that the five per cent of the land that is good for agriculture is kept available for the future farmer. The Food Land Guidelines have not been enforced over the last 10 years by most municipalities, even if they have incorporated them into official plans. Over the past decade, Ontario has seen thousands of acres of irreplaceable farm land lost to urbanization such as subdivisions, churches, sports fields and golf courses.

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Severances are a particularly insidious form of farm land loss. As well as the outright non-farm-related dwelling, even the so-called farm retirement severance is usually occupied by a nonfarm family within three years.

Even with the right-to-farm legislation, which is what Bill 83 is commonly known as, the farmer can still face harassment from the nonfarm dweller, which is Mr. Villeneuve's point. This can only be controlled by limiting the number of nonfarmers in the countryside. If a farmer is financially desperate and feels he or she must sell a housing lot to raise money, which is a common excuse, then the province should be available as a buyer—I have in my brief here, "of last resort," but it should actually be offered to the province first. It is a last resort for the farmer to sell it. It is definitely in the public interest to keep the land in agriculture.

We would also suggest the onus be put on any nonfarm uses to provide the separation distances suggested in current legislation. In most cases of which we are aware, the separation distances are based on the farmer's land and it limits his or her possibility to expand the barns or to change operations to something else.

This combination of legislation to protect the farmer from lawsuits and legislation to keep the land available for farming, plus a program to educate the public about the value of agriculture, should lead to a stable and productive sector of society. Thank you.

Mr. Villeneuve: Thank you very much, sir, for your presentation. It has been suggested to the task force on different occasions and times that a cloud on title for a severance in rural Ontario should be considered.

You do not go quite that far. However, I would like maybe your comments and your thoughts as to a cloud on title, such as, if there is a right of way on a property, we buy subject to the right of way. Here it would be subject to, not going after a neighbouring farmer for smells or what have you. Put the onus on the resident who has chosen to live in the countryside, as opposed to putting the onus on the farmer.

Mr. Hasler: I see nothing wrong with that, particularly shifting the onus. It should definitely be on the nonfarm resident, I believe. I have thought also of designating agricultural land as essentially an industrial land where you have the same thing. Anybody who happens to live in an industrial park—they are not usually allowed to live there, but if they did, then they have no complaint against that industry.

Mr. Villeneuve: It is a bit like moving close to Pearson International Airport and you know what you are going to have there, and then you start complaining about the noise and the fumes. The airport is there. The farmers are there. That is the type of situation we are talking about.

Mr. Hasler: We have lots of people complaining about airports, the same as the farm land. I am sure we will find the farm land has been there for a couple of hundred years, usually in our case, before the nonfarm resident was..

Mr. Villeneuve: It is easy to say "organic" and "back to nature." The problem is some of our city cousins go the countryside and they see our farmer going down the road with a spreader full of liquid manure and they say: "My goodness. Is that the stuff we are talking about?" And it does smell like manure and all of a sudden, it become pollution, where it was organic at first. When you face the reality of the material itself and what goes with it, it is not quite as pleasant.

These are the problems that we face as farmers out there, with people who tell us, "Oh, yes, it's organic and it's all great stuff to get back to the land." But as soon as they have to live with the noise and the smell of manure, and all the rest of it, it is not nearly as pleasant as they had anticipated, because the pile of compost in the garden in the city does not quite smell that foul.

Mr. Hasler: Yes, I chose that as an example and I have seen that happen before, where some farmer is using manure and even a person who thought he knew a lot about nature will be quite surprised by the smells and the noise of tractors and the fact that, in season, the farmer might actually—not even at dawn—be running all night long on the tractor with the lights on, to get the work done. It is part of the business.

Mr. Villeneuve: This is where that cloud on title— The man would have agreed to this particular legal right to that property. His recourse would then be to liquidate as opposed to suing.

Mr. Hasler: Yes, some lawyers I have talked to do not think that would stand up in law. But I do not know if it has ever been tried anywhere else.

Mr. Villeneuve: This is where some laws are made.

Mr. Hasler: Oh, yes.

Mr. Wildman: It seems to me that what you are proposing basically is stronger land use controls.

Mr. Hasler: Yes.

Mr. Wildman: Even in your presentation with regard to Bill 83, you say there should be companion legislation.

Mr. Hasler: Yes, I think it is necessary. We have seen lots of instances in the past where farmers have been surrounded by urban development or just a lot of severances. Even if there is no court case lodged, eventually they tend to be cut off from the support services they need. They get a lot of harassment, anonymous telephone calls and things. The farmer will just say the heck with it and sell out. I think we have to realize that we have such a small percentage of the land, and preserve it for the business of agriculture.

Mr. Wildman: I understand what you are saying and I agree with you. But surely it is a wider problem than that, particularly if the farmer sees his land as his retirement income. You have to ensure that farmers are getting a decent return. Just imposing land use controls is not going to resolve the difficulties that are being faced in the rural community.

Mr. Hasler
Yes, although if farming is profitable, I do not think the retiring farmer would have any problem selling his farm as a farm.

Mr. Wildman: That is a big if though, is it not?

Mr. Hasler: I am constantly amazed at how cheap food is in Ontario. I have not travelled the whole world, but from what I understand and have read, it is the cheapest in the world. It could certainly stand to rise. I would like to see farmers get more organized through their marketing boards or whatever, to the point where they can demand more reasonable prices for their produce. In the interim, as I say, if the farmer feels he has to get out, he is retiring or for whatever reason he does not make a go of it, and it is class 1 to 4 land, my group feels very strongly that the province should be there essentially to hold that land as a land bank, or whatever term you want, until a farmer does come along.

Mr. Wildman: In your view, the current land use guidelines, even if they are incorporated, as you say, into municipal official plans, have not been affected.

Mr. Hasler: Absolutely not. Niagara, which has the best land in Ontario, has a regional official plan that sounds very nice, but the political will to enforce it just is not there. My group quite often finds itself in the position of being the body that takes something into an Ontario Municipal Board. Not even the Minister of Agriculture and Food seems to be very active on that score.

Mr. Dietsch: We talked about long-term use of the land and you made some comments with respect to official plans, etc. There is another element that has to come into play too, and I am not so sure that it is always thought of. That is the other end of the market which my colleague, Mr. Wildman, touched on just ever so briefly. You feel that Ontario, as a whole, has "cheap food," I think that is what you said. Quality food but inexpensive is what I understand you mean by "cheap food."

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Mr. Hasler: Yes. You can eat quite well in Ontario for very little.

Mr. Dietsch: I am ever so concerned about the marketing aspect. I think we are talking about only one side of the thing here. We are dealing with the right to farm and we are trying to bring about some legislative changes. Unfortunately we are trying to deal with common sense. I do not care which government it is—there has never been a government around that could develop a way to legislate common sense, unfortunately.

The question I want to ask you is, in relation to all the changes that have occurred recently with the General Agreement on Tariffs and Trade discussions that are going on in Montreal, pressures coming about to reduce subsidies right now and the previous federal election with free trade, what impact do you see this legislation having in that respect?

We talk about preserving agricultural land, but I want to tell you that I represent a number of farmers who ask me, "Preserve the agricultural land for what?"

Mr. Chairman: All within the confines of this bill.

Mr. Hasler: I am not sure if the question is within the confines of the bill. I would like to comment, though, that in regard to the worries of farmers being able to make money under free trade or the GATT provisions, in the case of Niagara and the grapes which I suspect Mr. Dietsch has mostly in mind, if one identifies all the subsidies that the United States supplies to California, their grapes are 10 per cent more expensive than ours, even before transportation is brought in.

The US spends $4 billion a year supplying water to the vineyards, for instance. They would not be there if that were not supplied. Our farmers use much more benign chemicals. Maybe they cost a little more to use. They probably cost a lot more, actually, than the chemicals that are used in California. We have a minimum wage law. California does not. That wage difference is, as far as I am concerned, a subsidy to other countries, states or what have you.

As far as the European wines are concerned, they have a rather interesting system of essentially subsidizing their farmers. It is not called a subsidy. Basically, the moneys are rolled back in directly to sort of a branch of the finance ministry that deals strictly with agriculture, whereas our taxes go back into general revenue. Subsidies get paid out of general revenue. There are a few semantic differences to the European things, but with a little bit of clever negotiating, I do not think there would be any problem matching what they do.

One thing I have noticed quite recently, that some farmers are starting to get into, is that perhaps our interest in Niagara on grapes for wine production is somewhat misplaced. There is a certain market for wines but there is a much larger market for juice that is virtually unexplored—the market for grape juice and other natural fruit juices, but particularly grape in Ontario.

I have been to a number of things here at Queen's Park where the first thing that appears in front of me is a glass of orange juice, which is also subsidized by the state of Florida. It is nowhere near as nutritious as a glass of grape juice would be, let alone the fact that it is imported.

There is a growing demand in Europe that is well advanced, and it is beginning here, to use more fruit juices in things. With a little bit of encouragement, I think, if you could take 10 per cent of the juice market, you would use up every grape in Niagara. There is really no problem with markets. It is a matter of farmers being flexible enough to look at it.

Mr. Dietsch: Your organization would be quite willing to support more money for support of the agricultural industry, then, in lieu of the points that you are addressing here.

Mr. Hasler: Yes. Basically, I do not like massive subsidies, but I do not think there is any great need for subsidies. What is needed here, if the government is going to get involved, is more of a marketing thrust. The Ministry of Agriculture and Food puts out little posters with the balanced diet on it and they usually have orange juice on them instead of grape juice,

apple juice or tomato juice. There is a lot of subtle advertising that can be done that way, which would certainly help the farmers.

The government could put some time into identifying all the subsidies that are used in the United States, whether they are make-work projects or what have you. Michigan has a marvellous little system for cherry production which cuts their cost dramatically. They have rolling countryside, more than ours, and they will take a slope, declare it a hazard area, spend a lot of money hiring people to go out and plant cherry trees as a means of erosion control. Seven years or so down the line, when the trees are producing, they take it out of the hazard land and give it to a farmer; things like that. There are a lot of little tricks that are not called subsidies, but in fact are.

Mr. Dietsch: Just for the record, I am pleased to point out to Mr. Hasler that a considerable amount of promotion has gone on in the legislative area with respect to grape juice products and Ontario agricultural products, substantially so. With the help of your organization, we will help to swing it around, I am sure.

Mr. Tatham: I appreciate the comments of the gentleman, but I would like to say that I really feel it is up to the local municipality to have enough gumption to state what they should do. Oxford and Huron counties are probably the toughest— Our farmers are moneymakers, not in every instance but in many instances. The Christian Farmers Federation of Ontario, the National Farmers' Union and the Ontario Federation of Agriculture came together about 10 years ago and said, "We want to farm and we don't want severances." We have pretty well stuck to that. Some of our neighbours—I just look in the direction—think otherwise. There are problems in certain areas of the province where farm incomes are down, but I still think it is up to the local people to get up and say their piece.

What about other parts of the province where they do not have the heat units, they do not have the land, they do not have the rain? Should there be different policies for different parts of the province?

Mr. Hasler: In regard to Bill 83, I still think that anywhere in the province a farmer should be protected from harassment through a lawsuit or otherwise. Generally, if an area has land in classes 1 to 4, and it is such a small percentage, it should be protected. When you get into heat units, of course, you can have class 1 land in the northern reaches which is nowhere near as productive as class 1 land farther south. In fact, there are some species or some types of plants that will not grow further north, no matter how good the land is. Up around Earlton, you get that little pocket of nice black clay, but you cannot grow peaches up there. You cannot even grow tomatoes, I do not think, but you can grow hay, wheat and things like that.

Mr. Dietsch: You can spread manure, though.

Mr. Tatham: What about the situation where, say, a farmer is running manure into a neighbour's swamp or a neighbour's area? Would you go back to this board or would you have the environmental people go after him?

Mr. Hasler: Probably the first recourse of a complainer would be to this board.

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Mr. Tatham: He opens a valve and it runs away, or he is sprinkling a lawn and it is running down a little creek and into the swamp or into the neighbour's land and the deer will not feed. What do you do?

Mr. Hasler: That is improper use of the manure. There is no question of that. I do not think any—

Mr. Tatham: Will this board look after that, or should it be the Ministry of the Environment people?

Mr. Hasler: It depends. If a private land owner owned the swamp and wanted to register a complaint, he could do it through this board, which would then, I would think, automatically bring in the environmental protection branch.

Mr. Chairman: Mr. Tatham, I wonder if you would leave some time for Mr. Brown to finish off.

Mr. Tatham: All right. I have more questions.

Mr. Brown: I just have a quick question. I am new to this committee, in terms of considering these bills anyway. Just for background, could you tell me whom your organization represents?

Mr. Hasler: The Preservation of Agricultural Land Society has been around for about 10 years, based in St. Catharines. Our primary concern is the fruit lands, but we are concerned about good farm land all over the place. We have about 800 members currently. It is strictly a voluntary operation, so we face a little problem sometimes in doing all the things we would like to do, but we are in fairly close communication with a lot of other groups, such as the Sierra Club, the Conservation Council of Ontario, the Christian Farmers Federation and the Niagara South Federation of Agriculture. Only a third of our members are farmers, which sometimes surprises people, but when you realize that 94 people are dependent upon each farmer it is not surprising that a lot of urbanites are concerned about where their food comes from.

As well as preserving the land for farming activity, we have gotten more active in other things, such as trying to figure out why farmers are not earning a good wage these days. We frequently get research grants from the federal or provincial governments or private foundations to conduct studies of one kind or another. We just completed an almost two-year project to produce a conservation strategy for Niagara, which came out in September. We were proud of it and it covers a lot of aspects, including the right to farm. We are getting more and more into environmental things. There is no point in keeping the land available if the water or the air quality where the plants are growing is such that agriculture will not succeed. The more we look into it, it becomes a larger interrelated kind of thing.

We have been pleased to see, in the 10 years we have been working at this, that the public has come very much more into realizing where its food comes from and that it had better protect it.

Mr. Chairman: We have the Ontario Federation of Agriculture to hear from yet and there is a vote at 5:45 p.m., which we must all attend in the House. The next presentation is from the Ontario Federation of Agriculture. Brigid Pyke is here, along with Don Duncan, and perhaps others.

ONTARIO FEDERATION OF AGRICULTURE

Mrs. Pyke: On my right, we have Carl Sulliman, the newly appointed executive director and chief operating officer of the Ontario Federation of Agriculture. On my left are Don Duncan, the chairman of our environment committee, which has spent a fair amount of time on this legislation, and Cecil Bradley, our manager of research at OFA.

I am going to take you through the brief. I believe it has been circulated to everybody. Does everybody have a copy of it? Okay. I think I will stick pretty faithfully to the brief, but I will move along fairly quickly. It is not all that extensive.

To begin with, we are pleased to be able to submit the brief to the standing committee on resources development of the Ontario Legislative Assembly and appreciate the opportunity to comment on Bill 83, the Farm Practices Protection Act. This brief outlines the concerns that the federation has with the current wording of the legislation and draws attention to areas of it that the committee may want to consider for amendment. We hope this discussion is a useful contribution to the legislative process as it pertains to the Farm Practices Protection Act.

In case you are not aware, the OFA is the largest direct membership, general interest farm organization in the province—actually, the largest in Canada—that is operated on a voluntary basis. In addition to the 22,000 farm family and associate members we represent, we also count as members 26 affiliated organizations, including commodity boards, co-operatives, educational and other groups. Constituted in its present form since 1970, the organization has a long history of representing the interests of Ontario's farming community and traces its roots back to the Ontario Chamber of Agriculture established in the 1930s.

Before going into the details of our concerns, I want to point out that we do regret that the committee has not had time to hear from a number of interested individuals, farm organizations and counties within our federation. Here, I am thinking particularly of counties such as Grey and Simcoe. It was very good to see that the North Niagara Federation of Agriculture, at least, which has had certainly a very specific concern with this legislation—was able to be included in the process. That was excellent timing. We have briefs here from some of these county federations, as well as Women in Support of Agriculture, which we will table with the clerk. Hopefully, you will have a chance to review them as well.

We would like to draw your attention to subsection 2(1) of Bill 83, which states, "A person who carries on an agricultural operation and who, in respect of that agricultural operation, does not violate"—and then it lists clauses (a) through (e)—"any land use control law...the Environmental Protection Act...the Pesticides Act...the Health Protection and Promotion Act, 1983...or the Ontario Water Resources Act, is not liable in nuisance to any person for any odour, noise or dust resulting from the agricultural operation" etc. I will not read the whole section. This section of the bill raises a number of concerns which we feel the standing committee on resources development should address during its review.

The OFA has argued that the proposed legislation could be improved by removing the reference to violation of the various acts in clauses 2(1)(a) through (e). Note that it is only where a farmer "does not violate" any provision of the named acts that the farmer is not liable in nuisance when farming normally.

We believe that by leaving those in, we might unintentionally set up situations, first, where the farmer would be required to show that a violation had not occurred before the protection of the bill could be called into play or, second, where enforcement personnel would be led to lay charges to rule out farmers seeking protection under the legislation.

We believe the reference to violation under other legislation is unnecessary and has the potential to complicate the working of the bill. I hope that when I get to the end of the presentation, Charlie Tatham will re-ask his question that he put to the previous presenter here concerning violations. I think the OFA position is very clear on that.

What is a violation? Another difficulty arises on the same point, and that is defining a violation. If the provision is enacted unchanged, we need to know what constitutes a violation, who decides that a violation has occurred and at what point that determination has been made.

The question of a violation becomes particularly troublesome when we add in "any land use control law" that is granted under the Municipal Act and "any land use control law" is given the same status under the bill as the Environmental Protection Act or the Ontario Water Resources Act. Can municipal bylaws be accorded the same weight as provincial statutes to protect the air and water? A key point of our concern with the bill is that reference to any land use control under the Municipal Act.

Farmers do not want special status that would allow them to contaminate the environment. However, when the bill allows full sway to any land use control law, then farmers have no protection from zealous municipal councils that might seek to restrict farming activity. There have been a number of examples of that in the province, right now.

The second area of concern comes under the heading of the specific versus the general. The proposed legislation is quite specific in that it applies only in instances where odour, noise or dust are involved. Clearly these factors are involved in the majority of instances. But does the legislation have to be so specific? What about instances where smoke or light from greenhouse operations give rise to complaints? The Ontario Federation of Agriculture has suggested that the bill could be improved by not limiting its scope in this way. Rather, it could be phrased in such a way as to excuse any farm operation from liability in nuisance--whatever people feel is a nuisance and are apt to complain about. It should be broadened a little bit.

Another area we would like to draw to your attention is the "reasonable" versus the "normal." We have concern and expressed that concern during early discussion of the draft bill that "normal" implied existing practices and technology. With that interpretation, new technology in farming might not enjoy the protection of the legislation. As a result, we are suggesting that the legislation might better refer to "reasonable farm practice." In either instance, the burden will fall on the board to make a judgement on the facts of the circumstances.

Why come before the board? Subsection 5(1) of Bill 83 states, "Where a person is aggrieved by any odour, noise or dust resulting from an agricultural operation, the person may apply in writing to the board for a determination as to whether the odour, noise or dust results from a normal farm practice."

This section of the bill offers a person with a complaint an alternative to civil proceedings. It does not require the individual to first use the Farm

Practices Protection Act procedure before seeking resolution or remedy elsewhere. Farmers see this as a critical weakness in the legislation.

Why would a complainant go the board, when he or she could go to civil court and bring an action to have the practice in question stopped? Damages and costs could also be sought. What are the advantages of the board's procedure from a complainant's point of view? Where is the incentive to bring matters to this board?

The argument is made that a regular court would not hear a farm-related nuisance action, since the board's administrative procedure is available to resolve disputes. However, only experience will show the extent to which courts will actually do this and refer these types of complaints to the board.

The previous speaker alluded, as well, to compliance with board orders. Subsection 5(3) of Bill 83 states:

"The board shall hold a hearing and shall,

"(a) dismiss the complaint if the board is of the opinion that the odour, noise or dust results from a normal farm practice; or

"(b) order the owner or operator of the agricultural operation to cease the practice causing the odour, noise or dust if it is not a normal farm practice or to modify the practice in the manner set out in the order to be consistent with normal farm practice."

In order to resolve some disputes, the board will need to ensure that its order under clause 5(3)(b) is followed. What happens if the order is ignored? What mechanism or authority does the board have in the event that its orders do not meet with compliance? Can the board remain credible if it cannot enforce its orders?

In conclusion, the Farm Practices Protection Act as presented is a limited piece of legislation. It applies only to nuisance actions involving odour, noise and dust. That has to be made very, very clear. It may place an onus on the farmer to show that there has been no violation of specified statutes before liability is excused. It grants any municipal land use control bylaw the same status as a provincial statute to protect the environment. It does not require complainants to bring matters before the board before going to court. Moreover, it does not appear to have any means of enforcing its orders.

The OFA believes that the right-to-farm legislation should be adopted by the House. It is important that this principle of the right to farm be established in a statute, even if the scope of that statute is at first limited. We agree with the thrust of the legislation and we definitely want to see it passed into law. We are suggesting amendments where we think it could be strengthened, to be more useful and more acceptable to the farming community.

Finally, I want to make some comments on opinions that you probably have yet to hear from the Canadian Environmental Law Association and others, and draw your attention to a few key areas that we want to respond to. You should be aware that misconceptions have arisen around the legislation and that these can add to the confusion and make your job more difficult.

It has been alleged that people are losing their common law rights under

this act. This is not the case. Individuals will have full right of appeal from any Farm Practices Protection Board decision. Rights are not being eliminated, they are just being balanced in another form. This allows things to be looked at in a pragmatic, practical, and cheaper way before a person has access to go on and use the normal court system. It is charged further that the board will be biased, because the Minister of Agriculture and Food may appoint farmers to the board.

Peer review is presumed to work in the legal, medical, and other professions; so why will it not work here? It is unacceptable to charge that there is a bias in the system before it has even been set up. I think you have to be aware of that when the charge is made, as it is bound to be, that this thing is biased in the farmer's favour. Again, if lawyers, doctors or any profession that you can think of get into trouble among themselves with what is acceptable professional behaviour and what is not, it is a peer review system that is first put into place, assuming that no laws have been broken that are going to invite litigation or charges from another area.

The third point I want to make in answer to some of the charges made by the environmental law association and others. Public fears are being aroused, by this spectre of commercial pesticide sprayers, that this act does not hinder the unwise use of pesticide or that it does not control erosion when it causes pollutants to get into streams or what have you. Again, we want to draw to your attention to the fact that this bill is looking at nuisance. If pesticides are being used in an unsafe or unacceptable manner, farmers are going to be charged under the Environmental Protection Act, the Water Resources Act or what have you. We fully understand and I think farmers really understand that we are talking nuisance here.

There is a difference between that and somebody who deliberately allows a breach in a manure storage tank to contaminate—they are going to be charged under the Environmental Protection Act, the Water Resources Act or something else. That is fine. We have an obligation to try to encourage farmers to prevent that from happening. There should be no mistake; this act was never meant to protect farmers from anything like that. Farmers understand that.

I think that more or less closes our formal presentation. We are more than happy to answer any questions of make additional comments on any of the points that we have made. Again, we look forward to the passage of the bill. We hope that some of the amendments that we have put forward can be considered so that the bill can be strengthened and be of more use to farmers.

Mr. Chairman: Thank you Ms. Pyke. Next week is when the committee will deliberate on any possible amendments; next Monday, Wednesday and Thursday.

Ms. Pyke: I should say before you continue, we have just made a general overview submission here. We have spelled out the legalese of the proposed amendments that the Ontario Federation of Agriculture thinks—We have distributed them to all parties and the minister and we will make them available to you too. But rather than get into the legalese of our proposed amendments, we thought it would be best to take a more general approach.

Mr. Tatham: Was that a question I was supposed to ask you?

Ms. Pyke: You asked about what happens if a farmer condones or creates a breach of manure storage. I answered it already I guess. I am sorry, I had to jog to the past.

Mr. Tatham: All right. What is the Ontario Federation of Agriculture's attitude then? I think this sounds great. But if you let city people out in the country, you are going to have confusion. You are going to have more problems. As far as I am concerned, a farmer should be able to farm and let the city people stay in town, because you have severances and problems. What are your thoughts there?

Ms. Pyke: Okay. If I could just respond to that. The Ontario Federation of Agriculture knows one of the original approaches to this whole right to farm issue was to put into the legislation controls about who could come out and how close they could get to their neighbours. We had some pretty sophisticated formulas, like one pig equals four chickens and how far you could be from your neighbour and all that. I think the Ontario Federation of Agriculture is in agreement that we should take a more streamlined look at the right-to-farm issue and get this resolved at some level before we go on to the issue of the Food Land Guidelines farm land preservation issue.

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Farmers in our membership want their rights spelled out vis-à-vis their neighbours, no matter how close they are. Then, when this is done, we will get into the issue of land use controls. Generally speaking about the issue, we think it is very possible for farmers to live very close to nonfarm, rural people, as long as we have good understandings about what is expected of everybody in that kind of climate.

I think that in many countries of the world, nonfarmers live right smack beside farmers and they get along to one degree or another. We agree that the problem should certainly be minimized, but we do not think the solution is just to keep every last living nonfarmer out of the rural areas. It has not happened. We are way past that point right now, so we have to be pragmatic about where we go from here.

Mr. Villeneuve: Brigid, thank you very much for your presentation, and gentlemen. Section 2 concerns me, as well, because that says status quo, and then the rest of the bill goes on to actually make farmers toe the mark and stay in line. Certainly we are not here to give blessings to farmers to pollute.

However, going back to subsection 2(1), clauses (a) through (e) which you outline, on page 2 at the top, which is part of this bill, how do we solve this? The man was talking about the bird-bangers here two presentations ago. Seventy decibels is certainly not a realistic yardstick, if you will, under the Environmental Protection Act. We could probably name a number of other situations. What can we do if someone wants to take a farmer to task? The tractor is going to beat the 70 decibels, or whatever, in your normal farming operation. What do we do?

Mrs. Pyke: We understand and we agree that when a complaint is lodged against a farmer, there has to be a process and an understanding of who will go out to take a look at that and make an initial determination as to whether this is a nuisance-type complaint or whether this is something more serious. There is always going to be a slight bit of subjectiveness in that, especially in the initial stages of this process. There will be some grey areas. We admit that.

In a case where, as you say, what would appear to be farmers is a nuisance thing, a 70-decibel level for a bird-banger that is equivalent to a

calf bawling for its mother, or whatever, we feel that there are no shortcuts here. You are going to have to take another look at the Environmental Protection Act and make sure that we take out of that act things that are a nuisance, and that would certainly be that level of decibel.

Maybe if it is 200 or 2,000 decibels that will actually break people's eardrums if they are within 500 yards, you may want to leave that level in the Environmental Protection Act. But everything that is in there now that is really a nuisance should be out of there because this act will not work if the farmers say, "Aha, you are already in violation of the Environmental Protection Act, 70 decibels, so there you go."

Mr. Villeneuve: You are guilty.

Mrs. Pyke: The act is no good. They are absolutely right when they say this is not going to touch the problem. This is step one and then, as the minister told the Niagara people when he was down in that area a couple of months ago, yes, we will take a look at the Environmental Protection Act. Bud Wildman was in on that little discussion, too.

Things like that are going have to be hauled out of the Environmental Protection Act. To my view as a layperson, I would think that what is in that Environmental Protection Act should just be your hard-core health and safety violations—real areas that are health problems and really, truly environmental problems.

Mr. Villeneuve: I certainly agree with you there, except that, as you well know, the Ministry of the Environment and the Minister of the Environment at this particular stage of the political process in Ontario are very powerful.

Mr. Wildman: You will make him get a big head.

Mr. Villeneuve: Well, the truth of the matter is that it is. I just wonder what sort of clout the Ministry of Agriculture and Food or the farming organizations will have in trying to change that. That is a major problem. We have the Ministry of the Environment calling the shots on agriculture in just about every area of agricultural production.

Mrs. Pyke: We can probably come to some rational understanding, with the use of a protocol, between OMAF and all the other ministries involved, the Ministry of Natural Resources in the case of the Ontario Water Resources Act and the Ministry of the Environment in the case of the Environmental Protection Act. There is going to have to be an understanding that some of these so-called nuisance violations that are currently under these acts will be treated somewhat differently when this bill comes into place.

As farmers, presumably, we are reasonable people. I would think we can identify that bird-banging issue as one that definitely should be under this Farm Practices Protection Board. That is what the argument is about. I am sure nobody wants to go through that again. I would think we could do it a little bit better the next time.

Mr. Villeneuve: Again, it is not quite in this bill, but Mr. Tatham touched on it. We have some pretty marginal areas and we have some excellent areas across this province. Certainly, in eastern Ontario, in some of the municipalities we have there, the best use for some of that land is growing houses, no doubt about that.

Mr. Wildman: Or trees.

Mr. Villeneuve: Or trees—or both. As I see it, the problem—I do not think we can address it in this bill, but it will be coming forth soon—is can we treat Ontario as one area or should we have some slightly different rules for the north, the east, the central area and the southwest?

Mrs. Pyke: As the member has pointed out, it is not directly related to this bill. Stage two is the policy statement on the Food Land Guidelines. The minister came to our convention and challenged the Ontario Federation of Agriculture to get busy and give him some more policy on this. To that end, we will be talking to the individuals along the back wall there about our January meeting. We are going to take another crack at this issue.

We realize our policy on land uses is old and it is not entirely applicable. Just taking a bird's eye view, I would say it would be impossible to get one policy that will sell in Oxford and in Waterloo, where they are doing a much better job on land use, severance applications and everything generally than they are in Grey, Lanark and some other counties. It is going to be hard to get anything across the board, but we will try to get it as provincially comprehensive as we can. We will get busy on that right away. We know that we have to put together a decent response to the ministry's proposal, so that is what we are in the process of doing.

Mr. Villeneuve: I could have many more questions, but I will yield to my colleagues.

Mrs. Stoner: On page 7, section 2 here, you talk about the makeup of the board and suggest that peer review is appropriate. Do you have a suggested mechanism whereby the farming associations of Ontario could recommend people for the board or do you have some concept in mind of how the board should be set up?

Mrs. Pyke: Yes, we think there needs to be a complete process of consultation on all matters of agriculture with the largest general farm organization in the province. We think that is a rational step. In other acts, we have supported being named. In some acts, we have been named as having the right to appoint somebody to the board. The process there is that we make a list of appointments with the credentials of people who we think would be good and the minister, finally, has the last option as to which one of those he thinks is suitable. It is a good thing to do, because farmers have some confidence then, and as the organization that has put a great deal of effort into responding to the legislative intent and pushing for it initially, it seems a rational thing to do. So, yes.

Mrs. Stoner: Do you suggest that you would be the only association that would make those recommendations, or would that be a consulting process for you as well?

Mrs. Pyke: No, we insist that OFA be as involved as possible, but past that, it becomes a political decision then of what groups of people you want to involve in this process.

Mrs. Stoner: Do you have thoughts on numbers, weighting and that sort of thing on the board?

Mrs. Pyke: On the board? Don, did you people think about the overall size of the board?

Mr. Duncan: Not so much the overall size as the quorum. We only felt the quorum should be three, not just the chairman and one other member.

Mrs. Stoner: Okay, so that is a good recommendation.

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Ms. Pyke: We are thinking of a smaller type of board.

Mrs. Stoner: And there were previous recommendations about the board's moving about the province as opposed to having it central at Guelph or Toronto. Do you agree with that?

Ms. Pyke: Oh, yes. Farmers expect that. It is a good thing to do. I mean, it means getting out in the country and—

Mrs. Stoner: I agree. I just wanted to hear whether or not you had any thoughts on that as well.

Ms. Pyke: Carl is just making a point here that we do have representation from an awful lot of other groups on our board; so the Ontario Federation of Agriculture is a good place for one-stop shopping, as it were.

Mrs. Stoner: Thank you.

Mr. Chairman: How many days a week?

Interjections: Not on Sundays.

Mr. Chairman: I am sorry I asked that question.

Mr. Wildman: Ms. Pyke, I note that you referred to the fact that the Ministry of Agriculture and Food staff have their backs to the wall.

Ms. Pyke: Freudian slip.

Mr. Wildman: I would like to ask a couple of questions. Obviously I have had discussions with you people before on this legislation. I know the amendments that you have proposed that might improve the bill. I would like you to expand if you could, though, on why you think it would be useful to change the term to "reasonable" from "normal," since "normal" tends to be a legal term which is not unusual in the light of changing law.

Ms. Pyke: Okay. There are a couple of issues here. Both of them are terribly hard to define, for starters. There is a degree of ambivalence to both of them.

The original thought was that "reasonable" gave us a little bit more leeway for some innovative practices. We had our very first slurry store and at some point in time, we had our very first way of doing things in a different way. So we do not want to curtail any of that. Farmers are pretty quick to make use of innovative technology, and we did not want to curtail any of that. There are just sort of shadings between normal and reasonable.

We talked to Rob Wilson about it, the lawyer whom we consulted. His view as well is that "reasonable" is a more common type of word to try to deal with. I think you can also have normal practices that may not be seen as reasonable, and that is the one point that the environmental law people are making that I think we can agree with, to an extent.

For example, if you are in heavy clay, a very normal practice might be to use an earthen weight as a slurry store to control manure. It is cheap, effective and it can work in certain circumstances. That may be a very normal thing to do, but if you were to place that 30 feet from a watercourse in a gravel or granite bed that was fractured, that would not be a reasonable thing to do, although a person could argue that it is a normal thing to not put up a $50,000 slurry store for storing the manure. That is the shading.

We think "reasonable" is a little bit safer, and it brings in all the connotations of "normal," but it also gives us more leeway.

Mr. Chairman: I do not want to cut people off. However, you hear the division bells ringing. Mr. Pelissero has not had a question yet. Perhaps we could let him have a question.

Mr. Pelissero: Okay. I had a couple of other questions.

Mr. Chairman: So did some other people.

Interjection: But you did not ask anybody else.

Mr. Chairman: All right. Let's ask Mr. Pelissero and then we will come back to Mr. Wildman for a question.

Mr. Pelissero: Just very briefly, on section 2 of the bill we identify (a) to (e) as not violating any of those particular acts. You identified the term protocol of understanding. Certainly, at the same meeting with Bud Wildman and you—I was in attendance as well—the minister mentioned that there is in fact a protocol of understanding being worked out between the Ministry of the Environment and the Ministry of Agriculture and Food.

I say that is important because I have a constituent, a farmer in Grimsby, Mr. Lenhardt, who is being charged under the Ministry of the Environment similar to the Saunders case. I would hope the process that would work—he obviously has not been found guilty or has not had any kind of hearing process, so he technically is not in violation of that act until the conviction has been brought down. The protocol of understanding would hopefully kick in before the violation prosecution process would continue on.

I maintain that probably, if Bill 83 had been in place with the steps that are in here, the Saunders case might not have proceeded. We are in a situation now where we are going to have to go back and try to do something with Mr. Lenhardt in Grimsby, exactly along the same lines in terms of a bird-banger "causing" discomfort to surrounding constituents.

As you or a previous presenter pointed out, whether it is in there or out, it is going to be implied that this is not the only course of action. I believe Mr. Villeneuve said you cannot look at this in isolation. From your presentation, I gather you would like to see any of those references removed.

Mrs. Pyke: Yes, that is a fact. We would like to see them removed. Again, there still has to be a determination made as to whether this is a nuisance or something more serious than nuisance. Regardless of whether you have these acts listed here or any other acts listed there, that is going to happen for sure. If it is a nuisance, there has to be a mechanism to make sure it goes into this thing before everybody gets his lawyer and people wind up on each side of the fence.

One word about the protocol process is that we think that is a valid process that is going to have to happen, but it cannot just be between the Ministry of the Environment and the Ministry of Agriculture and Food, unless I am missing a key point here, because there are a number of other ministries involved: the Ministry of Municipal Affairs, the Ministry of Natural Resources, etc. It is going to have to be a little wider than just the two ministries.

Mr. Wildman: I have just two other short things. I know we have the problem of time.

Mr. Chairman: The bells call; we must go. Make the question and the response quick.

Mr. Wildman: Okay. One of the amendments the OFA has asked for is that it be changed from "on the request of an aggrieved person," the board would hold a hearing to "on the request of any person." Is that because you want to ensure that the farmer might in fact want something resolved by the board and he might not be seen as an aggrieved person, but would have the right to go to the board sort of as a pre-emptive thing to avoid having some other party come to the board?

Mrs. Pyke: Yes, that was our initial thought, Bud, but I think that we do not see a really workable system for this board to sort of give a clean bill of health to a farmer prior to something happening.

Mr. Wildman: I understand that, but if there might be some way of resolving something without further action?

Mrs. Pyke: Yes, okay. That is fine.

Mr. Wildman: Okay. The other thing is that you agree with the proposals that have been made, that there should be some kind of penalty, a fine, that the board would be able to exercise some enforcement power if it had made an order and that order had not been complied with?

Mrs. Pyke: Yes, there has to be an enforcement method. It has to be spelled right out that if you do not comply with the orders of the Farm Practices Protection Board, that becomes the basis right there for a court order to enforce compliance or fines or whatever, much as we find it distasteful to fine a farmer or advocate that.

Mr. Wildman: Thank you very much.

Mrs. Pyke: Mr. Chairman, would you accept these other county submissions formally into the record?

Mr. Chairman: Yes. We would appreciate that, as a matter of fact. That is a very good suggestion. We will distribute them to the members.

Mrs. Pyke: We can make ourselves available next week, if there is any consultation required with the amendment process.

Mr. Chairman: Okay. Thank you very much, Mrs. Pyke, to you and your colleagues for appearing before the committee.

The committee is adjourned until tomorrow afternoon.

The committee adjourned at 5:38 p.m.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

FARM PRACTICES PROTECTION ACT

THURSDAY, DECEMBER 8, 1988

STANDING COMMITTEE ON RESOURCES DEVELOPMENT
CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)
VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)
Black, Kenneth H. (Muskoka-Georgian Bay L)
Brown, Michael A. (Algoma-Manitoulin L)
Dietsch, Michael M. (St. Catharines-Brock L)
Grier, Ruth A. (Etobicoke-Lakeshore NDP)
Marland, Margaret (Mississauga South PC)
McGuigan, James F. (Essex-Kent L)
Stoner, Norah (Durham West L)
Tatham, Charlie (Oxford L)
Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:
Lipsett, Ron (Grey L) for Mrs. Stoner
Miller, Gordon I. (Norfolk L) for Mr. Black
Villeneuve, Noble (Stormont, Dundas and Glengarry PC) for Mr. Wiseman

Clerk: Mellor, Lynn

Staff:
Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses:

From the Canadian Environmental Law Association:
Mandelker, Barry, Student at Law

From the Ontario Soil and Crop Improvement Association:
Hill, Don, President
Sovereign, Richard, Past President

From the Ministry of Agriculture and Food:
Dunn, Donald R., Director, Foodland Preservation Branch

From the Ontario Pork Producers Marketing Board:
Jetschin, Ted, Settlement Department Manager
King, Allan, Project Officer

From the Ontario Cattlemen's Association:
Sharpe, Hugh, Executive Member
Gear, Douglas, Executive Member

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, December 8, 1988

The committee met at 3:35 p.m. in committee room 1.

PROTECTION OF FARM PRACTICES ACT
(continued)

Consideration of Bill 83, An Act respecting the Protection of Farm Practices.

The Acting Chairman (Mr. McGuigan): Ladies and gentlemen, welcome to the committee. In the absence of the regular chairman, Mr. Laughren, I am in the chair until he comes some time later this afternoon.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

The Acting Chairman: Our first petitioner is the Canadian Environmental Law Association, so we would ask the person to come up to the table. It is Barry Mandelker, a student at law. Of course, we are dealing with Bill 83, An Act respecting the Protection of Farm Practices. The only advice I have is to talk directly into the microphone in front of you. If you hold a paper or something in front of you, it inhibits recording. Welcome to the committee.

Mr. Mandelker: Thank you. My name is Barry Mandelker. I am with the Canadian Environmental Law Association. It is a pleasure to speak to the standing committee on resources development today. For those of you not familiar with CELA, we are a legal aid clinic specializing in environmental law matters. We also do environmental law advocacy and law reform.

One thing I would like to make clear right from the start is that CELA is not an antifarming group. CELA has long recognized the need to preserve and protect agricultural land as a vital natural resource upon which the province's future depends. In fact, I am sure many farmers agree that the main problems facing Ontario's agricultural land are not addressed by this bill. Problems of zoning, environmental planning, land pricing and urban encroachment are not addressed by this bill.

As well, the problems facing agricultural land are due to modern agricultural practices such as monocultures and heavy machinery that have caused soil degradation, soil erosion. The law of nuisance is one of the prime environmental laws which seeks to ensure that such degradation does not take place.

I would also like to say that this bill operates under a misconception, that misconception being that currently farmers are being forced out of their property by nuisance actions. An examination of all reported cases in Ontario, and indeed in Canada, reveals that there is no case reported that states that a farmer has been forced from his land by an ex-urbanite moving into an agricultural community and complaining of a normal farming practice. This just has not been the case.

There is one case on the record, Atwell v. Knights. It is a 1967 case in the Ontario High Court in which a farm sets up a new operation in a

residential community and the residents bring a nuisance action against the farmer. But this is a case of a new farm operation in a residential area. The fact situation is reversed. That is the fact situation in which, should it come up under this bill, the result would be reversed. In other words, this bill provides protection to any farm practice, no matter where it is conducted.

The Acting Chairman: For clarification, was that the one in Nova Scotia?

Mr. Mandelker: No. Atwell is an Ontario case. The Nova Scotia case is Desrosiers, I believe. That is the case of a pig farm. That has to do with the case in which the nature of the community had substantially changed. That area had turned from a rural area and, through urban encroachment, had already become a residential area. In that case, if a bill such as Bill 53 were in place, all you would have is a bunch of angry neighbours who could not get rid of the pig farm. The conflicts would still be there. This bill does not remove conflicts. What it does is protect certain farming practices, but it does not prevent the real problem from arising; that is, of urban encroachment taking place in the first place.

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I would just like to say a few words about the importance of nuisance law in general and why CELA feels so strongly about it. We consider it to be one of the vital pieces of environmental law doctrine. It is as important as the Environmental Protection Act. It is relied on constantly by environmentalists, and it provides civil damages where many environmental statutes do not.

As well, should the Legislature pass this bill, what is on the books is a precedent in which the law of nuisance has been compromised for the sake of a certain section of the economy. We see in this bill already that the protection has been extended, via clause 1(h), the definition of agricultural operations, to include chemical sprayers. It already is protecting commercial chemical sprayers from the law of nuisance, and we are wondering what will be next. Will certain industrial groups get together and ask that certain industrial practices be declared normal industrial practices? We are very much opposed to any encroachment on the law of nuisance.

We also feel that the law of nuisance is the best protection for farmers. The law of nuisance has built within it the standard of reasonableness as opposed to the standard of normalcy. A nuisance is defined by the courts as an unreasonable interference with the use and enjoyment of another's property. This bill seeks to protect normal farming practices. That means that should your neighbour decide to spread municipal sewage sludge on his property, and he wants to keep it on for two years and this is a normal practice in the area, the fact that it is dangerous to your health or it is an unreasonable thing to do, given the content of the neighbourhood, it will be allowed.

This is why there have been no successful nuisance suits against farmers, because the courts go by the standard of reasonability and a normal farming practice in a rural area just cannot be unreasonable.

The Acting Chairman: I do not want to interfere with your presentation, but since we only have a short time until four o'clock, if you are going to go through your brief, you will have to go a little faster.

Mr. Mandelker: Okay, thank you.

This bill does not distinguish between farmers and ex-urbanites. This bill makes two different classes of people, those who create nuisances and those who are aggrieved by nuisances, which means that should a farmer have a neighbour who is going to spray his orchard with a chemical, that farmer can then not seek a nuisance action against his fellow neighbouring farmer. The act does not distinguish between farmer and nonfarmer; it is just nuisance-maker and nuisance-receiver and it protects those who create the nuisance. The Minister's Right to Farm Advisory Committee recognized that the majority of nuisance complaints arise in farmer-to-farmer situations.

As well, we think the enacting of Bill 83 would create a weaker zoning legislation in municipalities. Municipalities in urban areas, believing that Bill 83 will be protecting farm land, might allow for weaker zoning laws and this, in turn, would just encourage more urban encroachment. That is the source of the problem we are talking about. A nuisance complaint is just a symptom of a larger disease, and that disease is loss of prime agricultural land and the meeting of incompatible land uses.

I would just like to say a point about the constitutionality of this bill. It is CELA's opinion that this bill violates section 96 of the Constitution Act of 1867. I am relying on my source of information being the case of the Residential Tenancies Act, a Supreme Court of Canada decision. Section 96 of the Constitution Act is that area that preserves for the superior courts a certain jurisdiction that cannot be awarded to provincial tribunals.

The Residential Tenancies Act set out a three-part test by which to determine whether a provincial tribunal was ultra vires the constitution.

The first test was a historical test, and that test was to see if the area being legislated was historically part of the superior court jurisdiction at the time of Confederation. Nuisance law has been handled by the superior courts since before Confederation.

The second test was to determine if the board was operating judicially. This board is basically deciding between two parties' rights--this is a judicial function--and it is doing so with reference to a piece of legislation. It is applying law between two parties, so therefore it passes that second test.

The third test is when you look at the action of the tribunal as a whole in the institutional setting. Whereas the primary purpose of something like the Workers' Compensation Board is not to adjudicate parties but to implement a legislative scheme throughout the province that was not around in 1867, we see here that the primary purpose of this piece of legislation is to adjudicate between parties a matter that has traditionally been before the common law courts since 1867. It is our belief that this could be grounds for striking down this bill as ultra vires.

I would also like to say that this bill does not distinguish between private nuisance and public nuisance. It is the duty of the Attorney General to enforce public nuisances. Those are those nuisances that aggravate a whole class or community of people as opposed to one individual. Does this act prevent the Attorney General? Does it fetter his discretion as to whether to protect the public interest in terms of the environment? I submit that it does. It does not distinguish between public or private nuisance.

I also have a natural justice question for the Farm Practices Protection Board. The body that does the investigation under section 4 is also the body that adjudicates under section 5. What does this mean? Does this mean that the board, when it investigates, looks at a particular farm practice, declares that it is normal and then, having made up its mind, holds the hearing? But what is this hearing but more like an appeal where the onus is on the person to change the board's opinion? This is not a fair hearing. This is not an impartial tribunal hearing both sides' facts. This is a board that has fettered its discretion.

Also, the legislation does not make clear who has to prove what to the board. Does a farmer have to prove that his activity is a normal farming practice? Is it for the aggrieved person to prove that he has suffered? The legislation is unclear on these points.

It is also quite distressing to see that the board has three grounds for dismissing a party before the hearing takes place. As it stands now, a person has a right to sue in private nuisance. We are removing this right and we are not giving this person any rights. We are saying that the board can dismiss, on the grounds that it thinks your application is trivial, and I am supposing that trivial is less than malicious or vexatious, otherwise it would not have been mentioned.

I would like to say, in conclusion, that right-to-farm laws, if they provide any benefit at all, do so at the psychological level. Perhaps farmers feel protected, whereas before they felt threatened by possible nuisance suits. But the fact of the matter is that the farmer is best protected by the law of nuisance, both from encroaching residential homes and from the nuisance impact of his fellow farmers.

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The current bill exposes farmers to nuisances without giving them recourse to the law for remedy. Even if farmers were being constantly hauled into court to defend against nuisance claims of new residents—and they are not—and if they were losing—and they are not—Bill 83 would not protect farmers from suits based on trespass of dust, noise or claims based on negligence. Bill 83 gives no new protection to farmers; rather it removes their best protection, the law of nuisance.

We submit that this bill should be withdrawn.

The Acting Chairman: We have 10 minutes for questions.

Mr. Dietsch: This is a very full and concise brief. To help me get a better understanding of your organization—for which I must apologize, but in my newness of term, I have do not have a full understanding of what the Canadian Environmental Law Association is—is this board a group that this brief was passed by? Was this brief passed by the environmental law association?

Mr. Mandelker: The Canadian Environmental Law Association is a legal aid clinic. It is funded by the OLAP.

You are asking who prepared it? I prepared the brief.

Mr. Dietsch: OLAP is what? When we get into government, we get into acronyms; when I retire from government I am going to write a book on acronyms.

Mr. Mandelker: The Ontario legal aid plan. It gets its funding the same way other legal aid clinics in the province do.

Mr. Dietsch: So you are funded by the federal government?

Mr. Mandelker: Provincial government.

Mr. Dietsch: So this brief you presented: you wrote it and then it was approved by this law association?

Mr. Mandelker: Yes. I am currently an articling law student at this legal aid clinic. I am supervised by counsel.

Mr. Dietsch: These are basically your personal opinions then, not necessarily passed by any overall riding association?

Mr. Mandelker: It is not a riding association but neither are they my personal opinions. I have sources at the back. Part of my information comes from articles in the United States based on right-to-farm laws in the United States. It is based on my interpretation of how I think courts might deal with certain vaguenesses in the bill. It is also based on discussions I have had with counsel at the law association.

Mr. Dietsch: You come from a farming background, no doubt.

Mr. Mandelker: No, I do not.

Mr. Dietsch: Not at all?

Mr. Mandelker: No, I was born in Toronto.

Mr. Dietsch: I will leave time for someone else.

Mr. Villeneuve: You are telling us we are getting the worst of both worlds here and it concerns me. In your opinion as someone learned in the law, right now the farmer has to conform with the Ontario land use control law, the Environmental Protection Act, the Pesticides Act, etc.

The board that will be created by this legislation will be one that has negotiating ability. If it went on to the courts of law, what is the scenario that you foresee if the board cannot arrive at consensus?

Mr. Mandelker: First of all, in that particular section that you mentioned--I believe it is section 2--it lists the conditions precedent before this act comes into effect; so that to engage the protection of this bill one has not to have violated, for instance, the Environmental Protection Act. But if that is going to be a determination of this board, the Farm Practices Protection Board, that is an ability they do not have to make. The only people who can decide whether a violation of the Environmental Protection Act has occurred is a court of law.

If I have been charged under the Environmental Protection Act, according to this bill, if I was a farmer and I did not want to be sued in nuisance, I would claim that you have no--sorry, what I should say is, it is because this investigatory body does not have an authoritative say in whether someone has violated that clause. Then, as a farmer, I would say that I still had protection under this act, because I had not been properly convicted in a court of law. These decisions can be appealed for years.

Mr. Villeneuve: Well, we know that every time a farmer starts up a farm tractor, he breaks the Environmental Protection Act law.

Mr. Mandelker: We can make exemptions and there are exemptions currently in the Environmental Protection Act that exclude farm practices. Subsection 14(2), I believe, and subsection 5(2) are exemptions for animal waste. Also, in the federal Canadian Environmental Protection Act, I believe, there will be protections for farm machinery and other guidelines. I might be wrong about that, but my point is that under those statutes, exemptions do exist for normal farm practices. This bill is not needed, if that is your concern.

Mr. Villeneuve: Okay, there was a write-up in the Toronto Star yesterday under the headline "Farm Bill Seriously Flawed" that is a legal opinion which goes in the exact opposite direction of what you are saying.

Mr. Mandelker: Is that the article by John Swaigen?

Mr. Villeneuve: John Swaigen, yes.

Mr. Mandelker: I do not believe I am saying the exact opposite. What was he saying?

Mr. Villeneuve: He says that it is giving farmers the protection where they cannot be sued. This was the intent of this legislation: at least to provide a measure of protection. You are saying now that we are getting the worst of what we had before plus some more loops and barriers in this particular legislation that create problems for the farmer as opposed to protection.

Mr. Mandelker: I believe what Mr. Swaigen is saying and what I am saying is that we need the law of nuisance. We need it unfettered by this bill. The current board's powers are dubious and what they would do is affect individual rights. One of the great individual rights is the ability to protect one's property from unreasonable harms. That is what this bill would be doing.

Mr. Villeneuve: We would have some people who are involved, have been involved, or know about normal or accepted farming practices in an area. We would come to a recommendation from this board. If the agreed people are not happy then you go beyond. Would you see the going beyond into the courts of law as a trial de novo? Would you see it as some of the findings of this nonjudicial, possibly quasi-judicial board as having some influence?

Mr. Mandelker: You are asking me about when someone makes an application to the board as to whether a particular practice is a normal farming practice. To me, those two sections, 4 and 5, are very confusing. I mean, what is happening? Who is making the application? Is the farmer making the application or is the aggrieved person making the application?

Mr. Villeneuve: Who could be a farmer as well.

Mr. Mandelker: I do not know. It could be by the definition, because it simply states—I am not quite sure of the wording—but it is slightly different in section 5 which says, "a person is aggrieved by any odour, noise or dust."

For instance, if a farmer felt threatened by a nuisance action from his neighbour and then made this application to figure out whether his conduct was

a normal farming practice, at that point the issue is before the board and his neighbour is prevented from getting an injunction via section 6. That section says that whenever a matter is before the board, no injunction shall ensue. The farm has effectively ended the aggrieved person's legal recourse and the nuisance will continue unabated.

Mr. Villeneuve: I think I could have a long discussion with you on that, but I will relinquish to some of my colleagues, whom I am sure have some questions of our witness.

Mr. Chairman: Mr. Tatham is next. I hope you will leave time for Mrs. Grier.

Mr. Tatham: I have sat on a land division committee for about six years. I watched city people and country people and sometimes country people and country people almost come to blows because somebody wanted to sell off a piece of land and let a city person come out there. They talk about sending the Ontario Provincial Police out to stop them from running tractors, spreading manure and things of that nature. Basically, what do we do? How do we make it work?

Mr. Mandelker: I think what we need is a strong guide to agricultural zoning laws; agricultural districts need to be set up. In the United States, there are certain practices that are occurring where there is a state trust being set up or where the government steps in to provide money that would equal the developing price of the land and sort of offset this mad rush to sell. What is needed are strong planning and zoning laws. We have to stop the urban encroachment on the land before the nuisance gets there.

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Mr. Tatham: It has already happened in some cases. How do you help the people who are trying to farm who have city people beside them who do not like these things? What do you do now?

Mr. Mandelker: In those cases, we are going to have those complaints regardless. If you put in a law that says A cannot sue B and they are right beside each other, you have not made their life any easier. He is going to complain one way or the other and the farmer would still have to worry about negligence, the farmer would still have to worry about trespasses and the farmer would still have to worry about the interpretation of normal farming practice and just living with his neighbour. The harm has already been done. If there is that person living next to a farmer, the harm has already been done. All we have done by passing this law that protects against nuisance action is that maybe the farmer will be less careful.

Interjection.

Mr. Mandelker: I do not want to impute any sort of negative motive to a farmer; I am just saying that as it stands right now—

Mr. Tatham: Farmers are good people.

Mr. Mandelker: I believe that. I am just saying that if you give someone immunity, you are not encouraging him to be more careful. That is all I am saying.

Mrs. Grier: Before I question, I just want to sort of clarify the status of your brief, if I may, because it has certainly been my experience

that briefs submitted to standing committees have been passed by the board of the CELA and I assume that was the case in this one. In response to Mr. Dietsch's question, you did not seem quite clear.

Mr. Mandelker: CELA board meetings occur on a monthly basis, and this has not met—

Mrs. Grier: Not yet?

Mr. Mandelker: —at the board but a brief such as this would not require board approval.

Mrs. Grier: In response to the question by Mr. Tatham, I understand from what you said—and I am not a lawyer—that my recourse now, if I am living in the country and I am objecting to my neighbour, is under the law of nuisance.

Mr. Mandelker: That is correct.

Mrs. Grier: But you are saying that there are very few cases actually brought under the law of nuisance.

Mr. Mandelker: There are many complaints, but the law of nuisance is based on the standard of reasonableness and no court has ever decided that a normal farming practice is unreasonable, given that it is in a rural setting. The only case mentioned by the standing committee report is a case again, I think, in Nova Scotia or New Brunswick, and that is the case in which the area has already been encroached upon by urban people to the extent that the farm is now in the minority. One of the considerations in nuisance law that a judge is concerned with is what is normal for that area, the character of the land, so to speak.

Mrs. Grier: If the definition within this bill is "normal farm practice," which is the same as in the nuisance—

Mr. Mandelker: No, the nuisance is "reasonable," so a normal farming practice is not necessarily a reasonable farming practice.

Mrs. Grier: I see.

Mr. Mandelker: That is to say, a normal farming practice might be to have the corn drying to scare off birds, but if it is operating at four o'clock in the morning, that might not be a reasonable practice, to which certain restrictions would then be imposed by a court.

Mrs. Grier: In section 2, where it says you are not liable for a nuisance unless you are violating the land use control bylaw or the Environmental Protection Act or anything, am I correct in understanding that if you had been convicted under one of these laws, you might then be subject to this bill?

Mr. Mandelker: No. If you have been convicted by that law, then you cannot claim protection of this bill.

Mrs. Grier: Okay. If I am the neighbour who is aggrieved, I almost have to wait for you to be convicted under one of these in order to then bring suit under this bill.

Mr. Mandelker: That is a question. Another question might be that in order to protect my right to sue my neighbour, I might then have to engage in a private prosecution under the Environmental Protection Act in order to preserve my right under nuisance. What this bill might in fact do is create more litigation, whereas before if people had complaints they worked them out. Now we have a situation where your neighbour is going to be running to the court to lay a private prosecution just for the hope of keeping his nuisance action.

Mrs. Grier: There has been some discussion of amending this section to delete clause 2(1)(a), which is the land use control bylaw. Would you have any comment on the effect if zoning bylaws were removed as one of the exclusions?

Mr. Mandelker: I think this is an area where we need more zoning bylaws. This is the main problem with the act, the main problem that the bill is trying to remedy. We cannot talk about lowering environmental protections; we cannot talk about removing the applicability of these acts. What we should be looking at is ways to protect farm land and ways to help farmers, not ways to lower environmental protections, not ways for people to get around laws.

Mrs. Grier: But the fact remains that there are a lot of cases now where there are people living in the country and where that clash is occurring.

Mr. Mandelker: Not necessarily before the courts though, but certainly there are clashes.

Mrs. Grier: It occurs I presume before the local municipal councils or in the MPP's office.

What kind of mechanism would be preferable to this legislation to try to resolve that problem? Is there any way in which a form could be created where some mediation or some resolution of those problems could occur which would not have the detrimental side effects that you attribute to this law?

Mr. Mandelker: I believe that would be a good solution, to have such a committee set up. Currently, if a situation like that were before the courts, the courts have tried to handle those things as equitably as possible. In cases where a new urban community has developed around an old farming community, the courts have awarded generous damages to the farmers to try to equal things out. It is still Ontario that loses, because it loses its agricultural land.

I have to stress that what is needed is to remedy these situations before they occur. Once they happen, we can only try to mediate and resolve people's interests as best we can without creating conflicts. A bill such as this, which tends to put one class of people above another class of people, does not help anybody.

The Acting Chairman: I am afraid I am going to have to intervene. We are five minutes past the time. We have other people.

Mr. Dietsch: I would like to take exception to one comment and that is that this bill puts one class of people above another class of people. It is not my belief that it does that at all. I think what this bill does is to try to preserve the farmer to farm, make a reasonable living at his farming and keep it in just cause. The difficulty is we cannot legislate common sense, but it would certainly be nice if we had a magic wand that we could wave over people and they would understand it.

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The Acting Chairman: The Ontario Soil and Crop Improvement Association is our next presenter; Don Hill, president; Richard Sovereign, past president, and Doug Wagner, secretary-manager.

ONTARIO SOIL AND CROP IMPROVEMENT ASSOCIATION

Mr. Hill: It is a pleasure for us to meet with you this afternoon to discuss for a few minutes some of the concerns that the Ontario Soil and Crop Improvement Association has with regard to the act you are considering this afternoon.

The Acting Chairman: I am reminded that each person should identify himself just once.

Mr. Hill: Don Hill, president of the Ontario Soil and Crop Improvement Association.

We like to think of our association as a grass-roots farmer organization. We have over 7,000 individual members who belong to some 55 local, county or district branches. As farmers, working with the miracle of life in every form, it gives our members a strong sense of pride and purpose.

Our association was founded in 1939 and in a few months we will be starting the celebration of the next 50 years in our efforts to act as a significant link between research and farm production. We also like to think that we have been strong promoters over the years of responsibility in the use of science and technology in the production of safe food for the benefit of consumers.

As far as this act is concerned, our basic concerns are with three sections. The first one is clause 2(1)(a). It is our understanding that this section particularly deals with municipal bylaws covering such things as land use, noise and other aspects that might be related to agriculture. Our concern is that in some cases we feel that many of those bylaws have, in fact, been passed to try to restrict agricultural practices and have in some cases placed farmers in contravention of such bylaws. Our concern and our recommendation would be that this provincial act should take precedence over local municipal bylaws that affect agricultural production.

The second concern we have is with section 3. Our concern there is that appointees to the board, and we are asking that there be a number of appointees to the board, be farmers and that they represent many different types of farm operations. What we would hope would be the situation is that when a farmer appears before that board, that at least half of the people investigating the situation might have the same farming background as the person called to account for his actions. We realize that that may require a large number of appointees, but we do not think it requires a large number of people at any one hearing.

The final section, and I am not sure whether anybody has drawn this one to your attention or not, is subsection 5(5). The point we want to raise with the committee is that in a good many cases in agriculture, timing is absolutely critical in getting work done. Our concern is that any time that a farmer is asked to appear before the board or is taken to court by someone who feels he has been adversely affected by the farming operation, that the farm operation not be subjected to injunctions unless it is in contravention of one

of the provincial acts. In other words, if it is just noise, if it is some other thing that is controlled or is subject to a municipal bylaw, that an injunction not be allowed against the farm operation because in many cases those operations have very short periods of time in which they must be carried out, whether it be harvest, planting or the application of crop protection chemicals.

Those were the concerns that we wanted to raise with you. We would be glad to answer your questions. To do that, I will answer those related to subsection 5(5) and Richard Sovereign, our past president, will assist me in some of the other sections.

Mr. Tatham: I have just one question. I appreciate this crop of good people.

Many of the local bylaws are, in fact, too restrictive and result in many normal or reasonable agricultural practices being in contravention of such bylaws. But who passed the bylaws? I mean, if it is local people, if you have local farmers on your municipal council, do they not make the bylaws?

Mr. Sovereign: I am Richard Sovereign, past president. I would suspect that in a large portion of Ontario that is the case. I happen to come from the region of Halton. In the region of Halton, I am in the city of Burlington where there happen to be 17 farmers out of 140,000. We do not have a chance of getting any kind of seat at the city level, as you can understand.

I could just draw to your attention that one bylaw they passed was that on all of the country roads other than the regional roads, there are no trucks allowed. If you can imagine trying to farm—

Mr. Tatham: There must be a message there.

Mr. Sovereign: Imagine, if you can, trying to farm when, every road you go down, trucks over 5,000 pounds are not permitted. What happened originally was that the sign was put up trying to curb gravel trucks, transports and what not from using the roads, but they did not bother to inform the farmers what the real case was. They did not bother to give a farmer some kind of certificate saying he was exempt, and they did not bother to tell the police. Consequently, it was just harassment until we finally got the thing sorted out about four years afterwards.

Quite often, you get these bylaws put into place which are absolutely ridiculous as far as a farm operation goes. It really is not going to matter to the people who are living on that particular country road whether it is a truck delivering their furnace oil or a snowplow going up in the wintertime or my truck hauling a load of grain out of that field. But this is the type of law the municipalities sneak in and then people will take you to court and you have to put up with it.

Mr. Villeneuve: As you notice, my Liberal colleagues, local option does not always work.

About the board itself, you have expressed concerns, and so have I: a quorum. I understand where you are coming from, that there should be at least three cash croppers or people who understand cash crop farming available to go across the province: hog producers, cattle or poultry people, dairy farmers, what have you. That would probably cover a larger number than maybe was anticipated, but certainly they should be someone with a knowledge of agriculture and certainly they should be a majority.

What do you feel a quorum should be? I think this legislation allows for two people. Do you agree with that?

Mr. Hill: In our discussions, we felt that the minimum number to hear an appeal should be three: a chairman plus two others.

Mr. Villeneuve: Yes. I think that makes sense.

Back to your problems as one of 17 in a large urban community. Have you experienced other problems than this rather unique one? I should not say it is unique, but to all of a sudden ban trucks from regional roads sounds pretty drastic. Do you run into other problems that may not have gone to court but in your experience as a—

Mr. Sovereign: Personally, I have not run into other problems. Problems are arising there all the time, such as corn dryers running 24 hours a day and the noise; the spreading of fertilizers, particularly when we have herbicides in them. In my particular area if we got into a situation where the only way we could control a pest, because of weather and what not, was by aircraft, I am 100 per cent positive that we would not be able to do it. The neighbours would not stand for it.

The opposition has become so great that you just do not dare do anything your grandfather did not do. If that was the way he ran his farm, that is about the only way you can run it and survive. I recall a meeting a few years ago. There were quite a few people and they were quite concerned. There had been some aerial fertilizing going on for the spring and winter wheat—this goes back about eight years ago—and they were concerned; they had felt a few pebbles when they were driving down the road from the plane going overhead. Their houses happened to be right there and they did not know what they were getting on their lawns. It would be to their benefit, but that did not matter. They had not asked for it to be done, so they would be in opposition to it.

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Mr. Hill: I do not want to be hard on our municipal politicians, because when they pass these bylaws they are doing their best to try and control a situation. It is just unfortunate that when you pass a noise bylaw to try to stop snowmobilers or motorcycle riders from disturbing the populace at odd hours of the day, a very irate calf that has been weaned from his mother may, upon occasion, make more noise than the snowmobile does and gets his owner in trouble for I suppose what he thinks is a fairly legitimate complaint.

I think it is those sorts of situations that are pretty hard at the municipal level, when you decide to pass a bylaw to try and solve a problem, to really have considered all the ramifications of what on the surface looks like a very good action in order to correct a situation that needs correcting.

Mr. Villeneuve: You may have heard the previous gentleman who made presentations from the legal profession. I note your concerns here. In the very first concern you show at clauses 2(1)(a), (b), (c), (d) and (e)—and let's it, if we were to try to circumvent this, I do not think this bill would ever pass—what can we do, in your opinion, to render your situations compatible without making farmers a special élite group, without opening doors for other groups to seek some degree of protection?

I think every time we start a normal farm tractor of 60 horsepower or more we probably break the law. Certainly bird-bangers break the law. Corn

dryers break the law. We just do not want to put farmers outside of the law; but this law is not very workable, yet it is part of this legislation. Can you help us there?

Mr. Sovereign: I have been on that farm for 25 years and I have been drying corn for 25 years. When they pass a new law, why could agriculture not be excluded from that law? If it was there and carrying on a reasonable operation, why would it have to be included in the new law or come under the restraints of the new law?

Mr. Villeneuve: I was hoping that the board would be able to give some quasi-judicial direction, but now that we see and hear the legal people telling us that we are getting the worst of both worlds here, I am just not sure. That is certainly not the intent of the bill.

I would not like to be one who was part of making life even more miserable for our farmers. Let's face it, the markets and the weather and the banker can make life pretty miserable for us already. This is certainly something that we have to address, possibly when we get to regulations. I do not know just how we go about this, but I think in the regulations we will have to address some of the concerns that have been expressed and make sure that we are not setting up more hoops and barriers.

Mr. Dietsch: I am curious on Mr. Villeneuve's question. He made reference to decibel ratings. There are no decibel ratings in this bill. There are also no decibel ratings in the environmental bill, so I do not know exactly where that avenue is coming from, but I want to make that perfectly clear.

There are a number of people who understand the importance of trying to operate a farm in a good and productive manner. I wanted to ask you a question with respect to your comments with regard to subsection 5(5). I am not sure I understand exactly the point that you were trying to make in that area. I would like you to reiterate the point that you were trying to make so that I can fully understand and appreciate what it is you were trying to address.

Mr. Hill: Subsection 5(5) says, "Any party to a hearing under subsection (3) may appeal an order of the board on any question of fact or law or both to the Divisional Court within 30 days of the making of the order."

Our concern is that during this period, from the time the order is made until the appeal is launched or the appeal is completed, the person bringing that action may not be able to ask for an injunction against the practice that is being carried on as long as it does not contravene one of the provincial acts.

Mr. Dietsch: Are you suggesting then that a person who is using a bird scarer--let's use that as an example--would not have to cease and desist until such time as it went through the process? Is that what you are suggesting?

Mr. Hill: That is what we are asking for.

Mr. Dietsch: Likewise, would the same thing apply in any of the practices considered normal? If you were spreading manure on a particular area of your field that is causing the difficulty with whomever, then you are suggesting that they be allowed to continue to do that until this thing goes through the process. I would think a more reasonable approach would be to move out of that section and move over where at all possible.

Mr. Hill: I think the concern we have is that this has been before the board and the board has declared it to be, in the terms of the act, a "normal farming practice". So the board has made that decision. Now the person decides to appeal it again.

All we are saying is that whatever this practice is—whether it is spreading manure, whether it is operating a bird-banger or whether it is a harvest operation or a seeding operation—in all likelihood it is not going to take anywhere near 30 days to complete the operation. In fact, a good many farm practices take place within a matter of a few days.

All we are saying is that if the board has decided this is a normal practice, that the person not be allowed to stop the farmer from doing it for the short period of time that he may have in order to control a pest or save a crop.

He may only have to operate an irrigation pump for one or two days in order to get enough water on that field. If he is denied the opportunity to do that for a two-month period or at least 30 days plus some additional time, he may well have lost the crop, because the point of carrying on the operation will have been lost in that period of time.

Mr. Dietsch: I understand very clearly now what you want. I guess the point I would have to make, perhaps for the benefit of the researcher, is that I am not sure this bill would be able to intervene in the court process in terms of injunctions. I would like to know the answer to that question.

The Acting Chairman: We will get that answer for you.

Mr. Lipsett: My question is a clarification of subsection 5(5) also. Your recommendation says the board's decision "should not be subject to appeal...." Is there any appeal procedure of the board's decision that you see, that could be not normal, or available to somebody who would wish to appeal?

Mr. Hill: The reason we are saying "should not be subject to appeal" is that it is the decision of the board whether or not it is a normal farm practice. We feel that the people on the board are going to be in a much better position to determine what is a normal farm practice than a judge in a Divisional Court.

There may be other reasons why the appeal should be brought, because the hearing was not conducted properly, or something else may have happened. The only reason we are asking that it not be appealable is that once something is determined as being a normal and accepted farm practice, as in the case of this farmer, that he not have to go through the process of establishing again that this is a normal farm practice at the next level.

There may be all kinds of other reasons for an appeal, and we are not asking that those avenues be blocked. All we are saying is that if the board has made that decision, we feel that decision should not be appealable. You may disagree with us on that one, but we feel that having proved it once to the board to its satisfaction, perhaps once should be enough, if it is carried on by a good many other farmers in the normal practice of their business.

1630

I want to refer back to the question to the research officer. Under

section 2, in the last paragraph, to get the sense of the act, it says, "A person who carries on an agricultural operation and who, in respect of that agricultural operation, does not violate"—any of the five acts listed there—"is not liable in nuisance to any person for any odour, noise or dust resulting from the agricultural operation as a result of a normal farm practice and shall not be prevented by injunction or other order of a court from carrying on the agricultural operation because it causes or creates an odour, a noise or dust."

What we are really asking for is that you just apply that section to any appeals as well.

The Acting Chairman: So you are supporting that section.

Mr. Hill: Yes.

The Acting Chairman: Thank you very much. I have a question I would like to settle in my own mind and perhaps it will be of assistance to other people.

Yesterday and today, we mentioned bird-bangers quite a number of times. I am a farmer myself and I use bird-bangers because I have an orchard operation, but I think that except in very specialized areas such as the Niagara Peninsula, not many of them are used.

I see Hans Feldmann here from the Ministry of Agriculture and Food. I just wonder if he can tell us what percentage of the complaints are on tractors, because I think tractors affect all of agriculture.

Mr. Feldmann: I would like to refer this to Don Dunn, the director of our branch, who is in charge of the bill.

Mr. Dunn: I am afraid I do not have any statistics or numbers.

The Acting Chairman: Well, some indication. Are tractors a big problem?

Mr. Dunn: No. From the surveys we conducted, and I do not have the figures with me, odours were by far the most frequest type of complaint. Noise and dust were way down on the list as far as numbers of complaints. I would have to study this. We asked different questions.

The Acting Chairman: Just to give us some perspective on where these complaints are coming from.

Mr. Dunn: We have asked questions like, "Have you had complaints about any of the following?" One of the questions is noise from farm machinery and equipment. There were 39 out of 222 in the survey who indicated they had some complaints from noise from farm machinery or equipment. Noise from production facilities was eight. Certainly there are some, but as I say, as far as the survey was concerned, manure management type problems were substantially more frequent or higher.

Mrs. Grier: What volume of complaints are we talking about? What is the record of the ministry?

Mr. Dunn: Unfortunately, there is not a good record of complaints consolidated. The Ministry of the Environment is responsible for investigating

complaints. They estimate there are about 1,000 a year pertaining to farm practices.

Mrs. Grier: For the entire province?

Mr. Dunn: Out of maybe 10,000 they get a year, urban and whatever type, they estimate about 1,000 a year are related to farm practices.

Mrs. Grier: And you are saying most of those are for odour.

Mr. Dunn: I am saying a high percentage pertain to manure management. It is probably odours, both the storage and manure spreading, something related to manure management, but there are other types too. I think mainly we are looking noise, odour and dust, but certainly farmers are experiencing lots of problems with stray dogs and all kinds of other types of things that go beyond right to farm: trespass, pilfering, vandalism, a whole slew of things.

Mrs. Grier: But they are not addressed in this legislation.

Mr. Dunn: No. Right to farm is only focused on nuisances of odour, noise and dust.

The Acting Chairman: Thank you very much. I think that helps the committee.

Mr. Hill: Thank you, Mr. Chairman. We appreciate the opportunity.

The Acting Chairman: Our next presenter is the Ontario Pork Producers' Marketing Board, and we have Ted Jetschin, director, and Allan King, project officer. Gentlemen, perhaps you will just identify yourselves for the benefit of Hansard and proceed with your brief.

ONTARIO PORK PRODUCERS' MARKETING BOARD

Mr. Jetschin: Good afternoon. I am Ted Jetschin, director of the Ontario Pork Producers' Marketing Board and a farmer, and next to me is Al King, our project officer on the board.

We appreciate the opportunity to come before this committee. We represent 14,000 producers. We commend everyone here and, of course, the ministry for working and producing this kind of legislation. We do assume that regulations will follow, and it is a bit unfortunate that the regulations are not dealt with in more detail during this process, but rather too late, as far as we are concerned. It seems to me that the regulations can be possibly misguiding the intent of the legislation.

There is no question of the need of this kind of act. The continuing limitation of open farm land is everyone's obvious concern here. In view of my coming here, I sat down the other day and I looked around my own concession. In my particular concession, and this is a drastic change over the last few years, we now have one full-time farmer, five part-time farmers--and by that I mean people like myself who in a sense do other things outside the farm--two hobby farmers and nine rural residents, more in fact than people working the land, so obviously that is one of our concerns.

The pork board believes it is in the public interest to maintain a strong and viable agricultural industry in Ontario. Food is basic. It does not

come in clean plastic bags all the time. It does come from occasionally noisy and smelly operations, and we would not want them it any noisier and smellier ourselves, but obviously that is the issue.

We do believe and we recognize that the purpose of the legislation is to provide protection to the farm community from harassment and nuisance claims arising from reasonable farm practices. In that case, we tend to prefer the word "reasonable" as opposed to "normal" for the very reasons that our learned friend from the law said earlier. "Normal" and "reasonable," while they are often interchangeable in law, are not interchangeable. There could be some real question, particularly in the area of more modern farm techniques, that could not be normal and yet they could be perfectly reasonable, so there is a bit of a problem here that I think we have to address.

One of the major concerns we have is that we certainly do not believe this act or any of the regulations accompanying it should confer to the general farm community any kind of umbrella for protection against pollution of the environment. At no time should that be the case, so there is not a separate entity and protection for the farm community in that sense.

We do believe there should be an acceptance and introduction of new farm policy. There is no question that there are some 30-odd acts that concern themselves with farming and farming practice, so I do not see how we are going to be in any trouble in that sense. We are, of course, concerned with the compliance, and I will come back to that in some detail. We are also concerned with the aspect of first recourse. If I may ask you to turn to page 3 in the document you have before you, I will go through some of our major recommendations.

The Protection of Farm Practices Act, as it is presently written, provides authority for an aggrieved person--and that, of course, in my mind and in the board's mind, could be a farmer just as well as it could be a rural ex-urbanite--to apply to the board for a hearing, but the wording does not clearly specify that the board be the first recourse. We therefore recommend the addition of wording that, in effect, enshrines the concept that this legislation is indeed the avenue of first recourse.

1640

I suspect, contrary to the views of an earlier presenter, that that would alleviate all kinds of problems. Some of them can be easily alleviated. The previous group from the southern crops had a very interesting point that we did not put in our presentation, and I certainly would like to suggest that it should be there. If you are cultivating a field and it happens to be extremely dusty, as it is some springs, you cannot stop working that field if you are going to have a crop. I think that is well understood, so the problems and consequences of injunctions are something that should be considered by someone in this business.

I do not see any problems with any of this act in the sense that you cannot deny the right to appeal at any level. That is common law. That is the way we do things. But we do wish that the avenue of first recourse be through this act.

Secondly, there seems to be no mention in any way of disciplinary measures. I do not like that word because it seems a bit negative, but there seems to be at present no suggestion as to how the board will cause these things to be followed if a fault is found. There seem to be no teeth in the

act at this point. Again that often happens in regulation, but somehow I suspect that this is the place where that should have been discussed, not at some other place.

With regard to the membership, we suggest and recommend that the board be increased to seven members and the quorum be required to be made up of the chairman or vice-chairman and two other members--as opposed to the act which requires only one--thus increasing the quorum to three members.

We also feel that the one of the criteria used in appointing board members should be their regional location. This will satisfy two or three major concerns. If there are more members of the board there will possibly, we suggest, be a greater degree of accessibility in the province on a wide basis. The undue hardship on a farmer who is asked to come to Toronto at the wrong time of year, for example, if he happens to live in Essex county or Dundas county, seems a bit excessive. So if the board could move to the problem rather than the other way around, we think that may do something.

Secondly, in that case also, with more members on the board we would, I think, have a regional expertise. If there are local problems, some of the bylaw problems mentioned earlier, a local person is more likely to know about those and the history of those than someone coming directly from Toronto, as an example. I realize that the committee is not going to be all based in Toronto.

Mr. Dietsch: God, we hope not.

Mr. Villeneuve: Then we have a real problem.

Mr. Miller: It is nice for the farmers.

Mr. Jetschin: The expanded number of board members will also provide the opportunity to select members based on expertise and knowledge. One would certainly hope in the case of the community, as I mentioned earlier, but also of the specific commodities.

I would think that when you get into the area of livestock production, which is probably the area of most of the complaints, that--no offence to a cash-crop farmer--but I would suggest that the livestock farmers might know a little more about the problems related to it. Also in this aspect, some of the especially trivial disputes may be avoided simply by a little more local presence rather than a higher degree of bureaucratic type of involvement. We have to recognize that when we use the word "farmer" it is a very generic term. It could mean any number of types of operations and types of people.

Mr. Dietsch: A man out standing in his field.

Mr. Jetschin: Yes. Sometimes with mud up to--well, never mind.

Finally, the Ontario Pork Producers' Marketing Board would like to recommend that the establishment of the legislative regulations, as forming part of this act respecting the protection of farm practices, will always be done in consultation with the farming community. That started originally when the food land preservation policy statement came out some years back, and since then there has been a bit of a lack of any kind of consultation, and I certainly hope that that will happen. There seems to me to be a certain need for some companion legislation.

We already have, I think, the original Minister's Right to Farm Advisory Committee report. It found 38 acts that concern themselves with farming. I am not suggesting that we have more acts on one hand, but I suggest that there are certain things that have not been covered in this act. Agricultural land preservation is not mentioned at all. This is really an act for the benefit of farmers and the action of farming itself. There is no mention in here at all of land severances or any business thereto. I know why: because it is such a controversial issue.

Again, with whatever you have in this act—and we are very pleased with it as we see it, apart from the few points we mentioned—there is no question in our mind that common law will always be supreme. That is how this country functions, so I did not see any problems with that.

But the strong regulations, that is a question we are really concerned with. In a previous brief, we were certainly concerned with the minimal separation distances, how they came about, how they are going to be dealt with and who is going to deal with them.

We are very concerned also with the definition of animal units. There are some real questions there as to how you define it and how you define the density. That has not been dealt with and it certainly is not being dealt with in the act. The act could become quite different, depending on those regulations, and I am sure everyone here is concerned with that.

I think I would like to stop now and invite any questions. We do appreciate being here and we thank you for that.

The Acting Chairman: Thank you very much for your presentation. We will turn it over to questions.

Mr. Miller: I want to make one comment on the regulation aspect. Subsection 4(1) says, "The board may exercise such powers and shall perform such duties as are conferred or imposed upon it by or under this act including the power." In subsection 3 it indicates that the recommendations may be made to the minister through that board. If there are additions to it and the act is not working well, do you not think that portion of the board itself and the minister could maybe change those regulations to fit the need? It may be, once it is put in place and in use for some period of time, it should still be adjustable under the way it is drawn up here now.

Mr. Jetschin: Yes, I see that. I certainly hope that will be the case. I would suggest that regulations are an ongoing concern and situation. Yes, if some of them do not work, if they are not strong enough or they are too strong or too unworkable, I am sure they will be changed. We have all the faith in the world. The ministry has always done it that way, so I have no problems with that.

Mr. Villeneuve: Gentlemen from the pork board, thank you very much for being with us this afternoon. Companion legislation will probably be worked on to some rather extensive degree. Could you maybe suggest what your ideas might be on the companion legislation as you feel it would affect pork producers primarily?

Mr. Jetschin: We were very much concerned with the aspect of severances, which is not being dealt with in this act at all and therefore sooner or later will have to be dealt with.

Mr. Villeneuve: It is in the wings.

Mr. Jetschin: Yes, but meanwhile our land is being—and the farmers are as guilty as anybody. We know this. The farmers are severing off. I am biting my tongue every time I mention this issue, because I have a wonderful little corner lot that would go beautifully for a nice sum of money. It is hard not to do it. We know that. But it is also extremely silly to do it, because sooner or later that lot will be owned by someone else who will happen to object to the fact that I operate, or someone after me operates, a pig farm. It is a major issue that has to be dealt with. I am not saying this act necessarily has to deal with it. It would be nice if it did. It would be nice if someone deals with it soon.

Mr. Villeneuve: I think it will be dealt with very shortly under the food land preservation guidelines and what have you. That may well be where we have to split our province up in different regions, because we have different problems in Chatham from what we have in Stormont, Dundas and Glengarry, in northern Ontario or in the area that you come from immediately north of this city. Do you see any advantage to even considering regionalizing the province under this legislation, Bill 83?

1650

Mr. Jetschin: Not as it stands. The way I see it now, I think this is one of the missing links that I would like to have seen when we studied this act; that is, to have seen some of the regulations that were intended. There must be some work going on now on those regulations, and that would alleviate a lot of the problems with regional disparities, in that sense. But I see the value of the membership being large enough on the board, and the local expertise being large enough, that that would certainly alleviate a great number of the problems.

Mr. Villeneuve: Possibly further to that, some of the meetings should be in effect and actively on site where the problem is supposedly occurring, has occurred and maybe is ongoing, so that the people could see at first hand what is occurring.

Mr. Jetschin: Very much so, in the sense that if you have a local issue, where neighbours are complaining about a specific issue, whatever it be—and now I hear it certainly would not be bird-bangers but it might be, for example, manure spreading—it often will have involved, as someone suggested earlier, local bylaws. It certainly involves local people—neighbours—and it should be dealt with in that community, if it can be, for the simple reason that that is where the problem is. The solutions that occur in that neighbourhood have to expand in that neighbourhood as well as throughout the province. But they tend to be local concerns, I think.

Mr. Villeneuve: Possibly, the accompanying legislation could touch on the five areas within the bill that are mentioned in section 2, which is land use control, environmental protection etc. Those are areas which were set up, not with farmers in mind, but with the general population in mind. Certainly there are areas where, as farmers, we could be challenged under any one of those five items. I think that has to be looked at in possible companion legislation as well.

Mr. Jetschin: Yes, absolutely. I am not familiar with the details of any of these acts, but as we said earlier, farmers do not have the right to pollute and generally speaking, I do not think they do, certainly not on

purpose. If you break the Environmental Protection Act and pollute a stream, then you are guilty and no act in the world is going to stop you from that, and we do not want that to happen. I think if people are guilty of mismanagement of manure, we have to recognize as an industry that we cannot do that any more.

Mr. Villeneuve: Thank you. I will relinquish the time to my colleagues.

Mrs. Grier: I want to pursue your comment about the board being the first forum for disputes and a contradiction I see between that and section 2 of the bill which says you first have to almost demonstrate that the person committing the nuisance has not violated any of these other statutes or land use control bylaws. You indicated yourself that problems between neighbours frequently were worked out at the local bylaw stage. Do you not see, when a complaint is made, somebody having to go through whether or not there is in fact a bylaw violation before he then gets to this board, or do you see him going to this board and being told, "No, you had better go back to the municipality"?

Mr. Jetschin: As someone pointed out a little earlier, the first thing that usually happens is that the local MPP or the local councillor gets called; often it happens that the Ontario Provincial Police drive in the lane. By this time tempers have already flared and you are almost too late.

If it became properly known that this act is where you went if you had complaints, and that became the custom of the land, if you could call it that—it is a little bit formal; but if the acts were strong enough and the regulations following made that happen, then this would be a natural avoidance of those suits that this thing is trying to avoid; that is, you would not be charged under any of those acts for something which did not necessarily relate to those acts.

In other words, you are spreading manure on a field and someone charges you under the Environmental Protection Act. It is not against the law yet to spread manure on your fields. The fact that it smells bad to the person next door is a problem, but it is not against the law. If they had that easy access to this act and to this board then, it is to be hoped, these problems would be avoided, which I think is the purpose of the act. If you are polluting that stream—and there are local bylaws occasionally that are problems, as was mentioned by the earlier presenters—then we have a problem.

Mrs. Grier: Are you then envisaging this board as having an administration that would be readily available in different localities to deal with it? I am seeing that either it takes a very long time to get to the board and a very slow process or else an enormous bureaucracy within some ministry, presumably the Ministry of Agriculture and Food, which is going to be dealing with this.

Mr. King: We envision this act as taking care of those nuisance claims, the complaint about the odour. We do not want and we do not believe this act should protect anyone for a violation under any of these acts—they have to be there—because we do not want the environment polluted, either. What we want to do is prevent the farmer and the farm community from being dragged into a civil action when it could be resolved by this board.

We do not want to give this board great, unwieldy powers and we do not want this board to become a police force, having to decide that this action is

in violation of this act. That is not the case at all. But where it is a legitimate nuisance, an odour, a noise, and it is brought before the board, that is the type of thing we envision this legislation and this board handling.

Mr. Jetschin: I would also hope, if I may add, that the whole purpose of having this act and this board would be for fairly quick response. Maybe I am totally off on this one.

Mr. Dietsch: My supplementary is right along that line of questioning and in response to this answer as well.

I was going to ask you with regard to your comments that were made saying that if the board made a ruling that the farmer was in contravention, how you were going to support that, through what kind of mechanism. I determined from that that you were going to suggest there should be some type of penalty clause, but I became confused when you made the comment that you did not want the board to be large and unwieldy and with powers.

Mr. King: It does not have to be large and unwieldy.

Mr. Dietsch: Not large and unwieldy—that is perhaps the wrong terminology—but something with power.

Mr. King: We do see that the act, as it is presented here, does not have sufficient authority. The board should have within the confines of this act, and this is our opinion, the ability to specify or render a decision and to have that decision backed up by some authority; i.e., a fine or some sort of disciplinary action, which Mr. Jetschin does not like.

Mr. Dietsch: I guess it sort of runs contrary to what I thought you were asking for before.

Mrs. Grier: I am very interested in your comments on "normal" as opposed to "reasonable." Would you have any great difficulty if the wording of this act was amended to bring it into line with the other legislation that talks about "reasonable"?

Mr. Jetschin: That would be our preference.

Mrs. Grier: You would rather see "reasonable" used consistently.

Mr. Jetschin: Because it is consistent in law. As I understand it, the legal interpretation of whether you are right or wrong is whether you did or did not do a reasonable act.

Mrs. Grier: Right. Presumably in this context, "reasonable" would be reasonable to carry on agricultural practice.

Mr. Jetschin: Yes, because under certain circumstances, a reasonable act may not be totally normal, if a farmer is a fairly innovative, modern farmer. The first guy who flew fertilizer over his wheat field was not normal, but he was very reasonable because he saved his field. Then we come to the other issues as to interfering with other people, and that is another issue and not in terms of our question here.

Mrs. Grier: I am new to this committee and to this hearing. Among the groups that have sought this kind of legislation, are you unique in looking for that consistency or do you think it is a fairly broadly held view?

Mr. Jetschin: No, I do not think we are unique at all. I understand the Ontario Federation of Agriculture is very much in favour of the term "reasonable."

Mrs. Grier: I guess I have not read it. I missed it.

Mr. Jetschin: Other committees, to my knowledge, have also mentioned the term. It is a concern to the extent that the word "normal," while we use it freely here, is a very difficult one if you get into a situation with the law.

Mrs. Grier: It is hard to define around here, but we do use it. Thank you.

Mr. Dietsch: It is more difficult to define upstairs.

Mr. Chairman: We have two more people, if we can wind this up.

1700

Mr. McGuigan: Some of the farm groups have said they want to take out a list of acts in section 2 that affect this bill. I do not think you have said whether you want those taken out or not.

Mr. Jetschin: No, I did not say whether we want to take them out, simply because, of course, I would love to have them all taken out. I would love to be completely free of any kind of suit ever for what I do on the farm, but there is an aspect here of reasonableness, to use that word again, and that is, you cannot avoid those if you have mismanagement or contravention of all the acts.

There are 38 of them, all told, and any one of them could be broken in a more serious manner than the intention of this act. This act, as we see it, as described in the purpose, is to protect from not the legal term "nuisance" but from the general nuisance complaints that end up in nuisance suits, again, using my definition for nuisance as opposed to the legal definition; the ones that tie a farmer up at the worst time of the year, for example, as you can well imagine.

Mr. McGuigan: I appreciate that. I am a farmer, as I indicated, but cash crops, fruits and vegetables. The problems I have in this area are different from yours. Odour is not a problem but I have more in the area of noise. I well recall a hog farmer upwind of me who, thank goodness, no longer produces hogs. He stopped for other reasons. He found other ways, quicker and better, to make money.

When he was stirring up, or doing whatever it was, the liquid manure, it was nearly unbearable for my wife and me to eat a meal if it happened to be at that time. I understand that it is fairly normal practice to have a cap on your liquid manure and that there are other people who will not go to the expense of putting a cap on, because it is quite expensive. Can you give us the views of the Ontario Pork Producers' Marketing Board on the use of caps? Do you consider that reasonable or normal?

Mr. Jetschin: As a matter of fact, they are not very common, mainly because of the expense. If you put up $10,000 or $12,000 for a manure pit, you can at least double the cost of that manure storage, and it does not prevent you from suffering when that stuff is being spread anyway. It may protect you

if you are real close to neighbours during the year, but it does not seem to do the job that it was hoped to do.

I was involved earlier with a case in Huron county where a township had passed a regulation, "There shall be tops on all manure pits." It just was not workable, and it did not happen, because there was enough discussion among people who knew what that would or would not do. It is an unfortunate cost.

It would be lovely if there was a way we could deodorize, and we are working on it. In fact, the pork board pays a considerable amount of dollars in research money trying to find the ideal deodorizer. The guy who finds it is going to be very rich. We are all going to be very happy. Think of what that smells like to the guy who is spreading to it.

Mr. Chairman: Do you want to finish it off?

Mr. McGuigan: Can I finish? I have one more.

Mr. Chairman: Three more finishers.

Mr. McGuigan: One more. I find that very instructive and very useful. Down the road, they tell us we are going to have methods of injecting liquid fertilizer into the soil rather than spreading it. Is that something that is at hand or is it terribly expensive? What does that do to the operation?

Mr. Jetschin: It is expensive. It takes a different type of operation, larger tractors. For example, on my place it would be almost impossible because I do not have the tractor power right now. I would have to double the size of my tractor in order to do it.

It usually has to be done after planting. At least, one way of doing it is to knife it in after planting. There are times of the year when driving heavy equipment on the land is probably the poorest thing you could do to the land, but unfortunately, irrigating it with that same liquid manure is the most reasonable and best thing to be done for the soil. Again, we are talking about the problem of smell.

The trouble is, and this is why we need an act like this, farming once or twice a year is terribly smelly, and I am not sure there is any solution to that. I do not think we can go as far as the state of New York where they have started putting out blocks of farm land and trying to keep the people away from the farms. I do not think that is desirable either.

Mr. McGuigan: I have never been down wind of an irrigator. What is that like?

Mr. Jetschin: You have been almost. It will be the same thing as when they aerate the tank. It is disastrous.

Mr. McGuigan: Thank you.

Mr. Dietsch: I just wanted to ask you one question and then clarify a point. Your assumption with respect to "normal" versus "reasonable"—is that your own opinion? Is that based on any type of legal opinion, other than the comments from our presenter earlier?

Mr. Jetschin: No, this came from other research that we had done. We have asked about that, and that is a concern with our own people.

Mr. Dietsch: The ministry's legal advisers have indicated that "reasonable" is weaker than "normal." I think that is something that perhaps, when we are going through our clause-by-clause with this particular bill, we can get verification on, because I think, if I understand your presentation properly, you are most interested in seeing that farmers have the ability to carry on to do the farming business and do not want to be hampered by legal jargon around terms.

Mr. Jetschin: That would be absolutely true. If the lawyers find that "normal" is acceptable, then that obviously will be fine, but, right now, there are differences of opinion as to that.

Mr. Dietsch: Certainly.

Mr. Jetschin: Until that is settled, it is a concern of ours simply to say, "Have a look at the two words, please."

Mr. Dietsch: My good friend opposite will tell you that there are always differences of opinion when we are dealing with trying to build laws.

Mr. Jetschin: So I understand, in this building, yes.

Mr. Miller: There is one other point I would like to make on the protocol issue on the Ministry of the Environment. I think the ministry is working on the question of who is in charge and how we should respond to that. I think the Ministry of the Environment, in environmental issues, could be first on the scene, but the intent is to have it directed to this board so it can deal with it.

I would like to think—like that bird-banger case, which cost somebody a lot of money and was in the courts for a long while—that those kinds of problems can, in the future, be resolved without that high cost and high input, but instead, with co-operation in coming up with a solution to the problem. I just wanted to bring that to your attention, Mr. Chairman.

Mr. Chairman: Gentlemen, thank you very much for coming before the committee.

Mr. Jetschin: Thank you for having us here.

Mr. Chairman: Did you want to say something?

Mr. Dietsch: There is a letter in front of you with respect to protocol.

Mr. Chairman: Right. This has been distributed.

Okay, our next presentation is from the Ontario Cattlemen's Association. Mr. Sharpe and Mr. Gear are here. If you would identify who is who—I do not know—then we can proceed. Thank you for coming.

1710

ONTARIO CATTLEMEN'S ASSOCIATION

Mr. Sharpe: Thank you very much, sir. I am Hugh Sharpe. I am the immediate past president of the cattlemen's association. This is Douglas Gear, and Doug is from Dufferin county. I am from Lennox and Addington county.

I would like to say that the organ grinders on our association are either out of province or tied up in other business today, so they sent the

Interjection: They sent you to the right zoo.

Mr. Sharpe: As you can see, our brief is not very long. We have a short brief here. We realize too that the mind can absorb only what the seat can endure; so, with that, we will get on with this.

The Ontario Cattlemen's Association is pleased to have this opportunity to express its concerns on Bill 83, the Farm Practices Protection Act. The OCA has members in every county and district of Ontario. We are deeply concerned with their present farming practices as well as their abilities to be able to farm in the future.

Whether Bill 83 calls for normal or reasonable farming practices makes no difference. OCA does not condone sloppy or careless farming operations.

Some of our ideas and concerns possibly have been voiced before, but we think they are important and if we are repeating, kindly bear with us.

In the last several years, many farmers have asked for and received severances, not always because they wished to sell the lot, but because they had to sell the lot to keep the farm a viable entity. With this in mind, OCA feels the farmer should be able to sever a lot for family engaged in agriculture--son, daughter, father or a relative--and the said lot should have registered on the severance "agricultural lot." Should the lot pass in time from farm ownership, the buyer would be forewarned that normal farming practices could be expected or if, as we have heard from previous presenters, possibly it would be reasonable farming practices, but that anyway a farming practice is taking place on that land and let the buyer beware.

The Farm Practices Protection Board to resolve complaints: We like this idea and the OCA is pleased with this format. The informal atmosphere should (1) greatly reduce the hearing time, (2) encourage quick and amicable settlement and (3) keep most disputes out of the court. You probably have some lawyers here and they might frown on that, but we think that is very important.

The OCA supports the Ontario Federation of Agriculture brief in principle and hopes for a speedy passage of the bill in the House, with the co-operation of all parties.

Mr. Chairman: Thank you very much, Mr. Sharpe. You might be happy to know that around this table there are no lawyers as we sit here right now, and I noticed that a silent cheer went up around the table when you said that.

Mr. Tatham: Mr. Sharpe, I appreciate what has been said. I have a question, though, about the proposition that a farmer should be able to sell a lot to family engaged in agriculture: son, daughter or father. What length of time does that lot remain with the son, daughter, father, mother, whoever? Have you ever done a study on that at all?

Mr. Sharpe: I will turn this over to Mr. Gear. I understand Doug has been on the planning board in his county and has spent some time there and he has, I think, some answers for you.

Mr. Gear: Yes. In our county--that is, Dufferin county--I have been on one of our townships' planning board for the last, I guess, five or six years. Studies we have come up with indicate that the lot stays in that family's ownership for five to eight years before it is sold.

I know in our county there are some cases where the severance is one year and the lot is gone the next year. But where the people follow through with their original plan when they come for their retirement lot—in our township there are only three severances available, and those are a retired farmer and a son or daughter who is engaged in the business of farming with his or her father on a day-to-day basis for the preceding five years.

When these lots get turned over, like the people that come and say they want a retirement lot and they go through with their plan, build the house and the son and the daughter has maybe taken over the farm and the father is living in the retirement lot, we see these turning over from five to 10 years. The farmer, say, retires when he is 65 and he gets to 75 and he thinks, "Well, Jeez, this is no place for us, out in the country," and they sell the lot and move to town.

In a lot of places, the son who has taken over the farm will have children five to 10 years old but at that point they do not know whether they will want the farm or not. He would like to keep the house and to keep away from problems on the severed lot, but let's face it, the severed lot and the house is worth anywhere from $125,000 to $200,000 and he just cannot come up with that money to keep it in the family. The father probably has sold the farm to the son at a greatly reduced price from what market value was, and he needs that $150,000 to continue on his retirement.

Mr. Tatham: I appreciate what you are saying, and I think I understand the problems financially. Do you not in fact sterilize the land around that severed lot for any future development of cattle, hogs or whatever?

Mr. Gear: In our township, we go by the Foodland Guidelines and our official plan, so we can build a barn within 500 feet of that severed lot.

Mr. Tatham: Was it not 1,000 feet, or is it 500?

Mr. Gear: It is 500, but a severed lot in our township has to be 689 feet from an original barn if a farmer wants to sever a lot from the corner of his farm. A lot of people do not realize it, but 30 per cent or 40 per cent of the farms do not qualify for a severed lot just because the original barn and house are in the wrong position on the farm. Say, down at the other end it is swampy or something and you cannot put a lot anyway, so you only have the one good corner and it is less than 689 feet from where you want to sever your lot. It is 210 metres or 689 feet from the closest corner of the lot to the closest corner of the barn. I know that we stick real close to that law in our township. There are a lot of people who come, and we get called a lot of names, but they cannot get a severance.

Mr. Tatham: Just to comment, I think that 83 per cent of our land in our county is class 1 and class 2. I hate to see that land being used, but there are spots where you could put up a home. Boy, the people get out there. They are city folk and they want to elect city people to the township. All of a sudden, you have a turnaround and you have problems.

Mr. Gear: We find in our township that back five or 10 years ago lots were only worth about $5,000 at the maximum. I know when I first started on planning board, we might have had a meeting about every three months to discuss severances and there might only have been one. But now we have a meeting every month and at every meeting there are three or four severance applications, simply because of the cost. Lots have gone up in value. The lots in our area are anywhere from $30,000 to $55,000 now. The price and the urban people moving out are driving it.

At the same time they are coming out with the money, the farmer is probably sitting there with the banker knocking on his door wanting a first mortgage on his farm and he thinks, "Gee, if I could sever a lot and sell it for $50,000, I would get rid of the banker for a few years." This maybe makes more sense to him than putting a big mortgage on his farm and maybe losing everything. I think we are kind of caught in a squeeze.

Mr. Sharpe: It also might be the means of having him in trouble with the environment or whatever, because of his farming practices. You are caught right in the squeeze.

Mrs. Grier: Let me just tell you that when I built a house across from a major cattle operation in Simcoe county some years ago, the builder said to me: "You are going to get smells, you are going to get flies. Is that okay?" I said, "Fine, that's okay." We get both; so far no complaints.

I am very interested in your concept of putting something on the title to the lot, because certainly in the city the Ministry of the Environment frequently requires a developer who is getting a rezoning for residential development to put on the title, whether it be a condominium, apartment or house, that the property may be subject to noise or odours if it is adjacent to an industrial area. In other words, let the buyer beware. He has no recourse afterwards, because it is on the title. Is that the sort of concept you are suggesting here?

Mr. Gear: Yes, that was our idea in our own township, that maybe something like this could be done to more or less make the buyer aware that he is moving into an agricultural community. When they come in and buy a lot and their lawyer is doing their work and he sees this registered on the title, "agricultural lot," right away, especially if he is from the city, he is going to say: "What does this mean? What are the stipulations under this?" They are just what we stated here. You are forewarned. They are going to have normal farming practices.

1720

I read the Hansard report, where they had the idea of a cloud in there, but we feel this could save some problems where somebody sees this and says, "Gee, I am not going to put up with that," and he withdraws his offer.

Mrs. Grier: Has it ever been done? Have any townships or any farmers tried it that you are aware of?

Mr. Gear: I do not think so. We came up with a planning board. Where we got the idea was that we had a small industrial area close to a little hamlet. There was a public school right close and there was a church right across the road from this industrial area. This industrial area came up for sale and people were looking at it, and we got the feeling there could be heavy industry. We were getting a lot of complaints from the people who had kids going to school, plus the church people and the people who had houses right close, so we made it restricted. It is industrial, but with restricted uses on that piece of property, to keep it small and not noisy; no dust and no rendering plants. That is where we came up with the idea that maybe this could be done with an agricultural lot.

Mrs. Grier: What the Ministry of the Environment requires to be put on many of the developments in the city here is a warning. It is a warning that goes on title, "This property may be subject to noise and odours from

time to time," so that it is clearly there for the purchaser, rather than putting anything in the zoning bylaw or designating it.

Mr. Gear: That is mainly what we have in mind here with this agricultural lot. There are not a lot of teeth in this. If the people bought it and came back 10 years later complaining about the smell, I do not think there is an awful lot we could do to enforce it by saying, "Look, you bought a lot that is an agriculture lot," but at least we have something to go back on. The warning was there up front, not later on.

Mrs. Grier: Thank you very much.

Mr. Sharpe: Mrs. Grier, in the Hansard report it referred to rights of way and easements that can be registered on a lot, as I understand. We wonder if this can maybe follow in the same sort of pattern. If you and I had adjoining lots and we used a mutual driveway, it would probably be registered so. If I decided to sell my lot, the person buying it would say, "Do I have to put up with that?" Yes, he does have to put up with it.

Mrs. Grier: How it worked in my municipality was that when you granted a severance with a big adjustment or a rezoning or an official plan amendment in the case of new development, then one of the conditions to approval was that this warning be registered on the title so that subsequent purchasers would be aware of the impediment.

Mr. Sharpe: Do you see it as reasonable?

Mrs. Grier: Totally.

Mr. Gear: We find that quite often it is the second owner. Even if a farmer severs the lot and he sells it to a friend or somebody, even from the city, quite often it is not the first owner who gives you the trouble. It is when that fellow decides he is going to move back to the city and he sells it again. The second fellow comes right in cold to the situation. He is the one who does not like the smell or the noise.

Mr. Sharpe: You have no control over the second sale. You might have some control over the first one—"I won't sell it to this man, but I will sell it to this one"—but the second one is out here.

Mr. Dietsch: It would be better done by direction to the land division committee with respect to the condition of severance being granted that it be registered on title. That is it, and it is perfectly legal.

Mr. McGuigan: I will take a minute or two. I did a fair bit of investigation on a similar matter. It is not exhaustive, but I did a fair bit. There was a woman who bought a house and she got totally gypped. She had not used a lawyer and found out afterwards it was a terrible house. I looked into the possibility of a private member's bill which would make it possible to register those things that were wrong with the house against the title.

The answer I got back was that basically it is caveat emptor; she should have had a lawyer who should have looked after this. Rather than tying up the title with a whole lot of things—building inspector, health inspector and I do not know how many other inspectors—there was a whole list of things that you could register on title if you were really inclined to do it that way. I found that there is a bit of that in BC. But the answer they got was that, even if you put on that it passes the health inspector today, does it pass the

health inspector tomorrow or the building inspector and so on? They said that what you are supposed to do when you are going to buy something is to circulate through all the municipalities and find out from them what the status is.

Anyway, there seemed to be great reluctance to put anything on the title—for administrative purposes, I guess—or anything else, because things are constantly changing. In a sense, I do not think it is likely that you are going to get that, although I would like to see it myself. I think there is too much resistance. But even supposing that you did, do you think the farm community would support her? It strikes me that if you really look at the encumbrances on that $50,000 lot, it becomes a $25,000 lot or a $20,000 lot. You would think the farming community itself would like to see that.

Mr. Gear: You have a good question there. I could see where some people—you would limit your buyers and that would bring your price down, but at the same time it could be beneficial to the community to limit your buyers. Maybe farmers are prepared to take $10,000 or $20,000 less not to have the nuisance on their back all the time, just as half a loaf of bread is better than nothing. You brought up a good point there.

I think what you are saying could be true, but at the same time it is hard to say which way the farm community is going to look on it. But I myself say, I would look at it. Maybe I would have to take a little less for the lot, but at least that guy is not going to bother me as long as I carry on normal or reasonable farming practices.

Mr. McGuigan: I guess it is something we cannot answer, but I do want to bring up that point. I have one other question; it is a supplementary.

Mr. Chairman: Go ahead.

Mr. McGuigan: Some of the other farm organizations wanted to see section 2 taken out. I think you probably heard what the hog producers said. I would be interested in your comments on section 2 and whether or not it should be part of the act.

Mr. Gear: Yes. We would have to go along with what the hog board said on that too, because who would not want those acts taken out of his farming. When I first read the bill, I said Bill 83 is fine and we would love to have it, but if somebody is out to get you on the corner of your farm, he is going to get you under one of those five, somehow or other. Or, if he does not get you, he is going to cost you a $10,000 or $20,000 lawyer's bill to get rid of him. That is my feeling on those five things.

They can get their water tested and if you are spraying your fields on an acre lot in the corner, you are spraying right up to—when we are spraying around severed lots, we mostly keep out and we lose about five rows of corn close to where their severed lot is. The grass is as high as the corn come fall, but to keep peace you have got to do that because if you get right close to their lot, if there is a tree at the other end of the lot that dies, it is your fault because that spray drifted.

You have to live beside these people and you have to put up with a few of these things. But at the same time I have felt, and I think Hugh has the same feeling, that if somebody is on the corner of your lot and he is trying to close you down, he can nail you under one of those five. Maybe he is not going to win, but he is going to cost you a lot of money and hassle over it.

Mr. McGuigan: So you are not opposed to including those in the bill?

Mr. Gear: Not really. I do not see how you can throw them right out. As I say, we would like it that way, but there is no way.

1730

Mr. Dietsch: I just wanted to make a comment with respect to the point Mr. McGuigan was making earlier with regard to the cloud on title. In regional Niagara where I come from, a severance is permitted with respect to—the land base down there is much smaller; I would have to start out by saying that. When you are dealing with fruit farms in comparison to your type of operation, it is completely different in terms of the amount of land they are dealing with.

However, when they assume land from their neighbour through severance so that they are accumulating a larger parcel, there is a rider that is put on by title when that severance goes through that there will be no further severances permitted because the land is zoned agricultural, which permits no further severances.

I just wanted to ask you, in your particular area, would something like that work? I realize it is outside the relevance of this particular bill, but I wanted to get at that point you were talking about.

Mr. Gear: Yes, we call that a lot enlargement. Really that was the third severance. I never finished it before.

In our township, say you had 200 acres side by side with a house and barn close to one end which you wanted to sever off with, say, 10 acres. The only way you could do that is by lot enlargement, with the farmer next to you. He ends up with 190 acres and you end up with the 10 acres. So the severance is already gone. We allow one per 100 acres, but you can only retire once. So if you have 1,000 acres, you can only retire once. If you have no son or daughter, you get one lot on 1,000 acres. A farmer with 100 acres can have one severance too, as long as he is within the guidelines as regards a retirement lot or a lot for his son or daughter who is helping.

In that instance, you would have the one severance for the lot enlargement, where he would keep his 10 acres, but then that 190 acres would all become one parcel. No way you would have a deed for the 100 acres and a deed for the 90 acres; that all becomes one parcel. Then if the farmer who owned the 190 acres wanted an acre, and had not had a retirement lot before, he could have an acre off that 190 acres. But there is no way that larger parcel could be split up again into 90 acres and 100 acres.

Mr. Dietsch: I think that will help us with other bills we are going to be dealing with. I appreciate your comments.

Mr. Chairman: Mr. Sharpe and Mr. Gear, thank you very much for coming before the committee.

That completes the groups who are to appear before the committee today.

Mr. Villeneuve: I was going to bring forth the presentation of Women for the Survival of Agriculture. It has to do with the noise emitted by cows wearing chimes. It is before the courts and it has been brought to the attention of the committee. There is a presentation by Dorothy Middleton, who

belongs to the Women for the Survival of Agriculture in Crysler, which is in my riding.

I think suffice to say that we all have it as part of our material here. It is a living example of some of the problems which this bill is attempting to correct. I think it is well documented and I certainly appreciate the fact that it is part of the package which we will be studying in order to go through the clause-by-clause of finalizing this bill.

Mr. Chairman: If you are talking to those people, will you express our appreciation?

Mr. Villeneuve: I will.

Mr. Miller: Did you say it is before the courts now? How long have they been dealing with it?

Mr. Villeneuve: It is part of your package. It is something that gets a little bit difficult to deal with. It is a bylaw in the township of Cambridge, in the county of Russell. I believe there is a challenge to the bylaw.

Mr. Dietsch: Oh, it is in the bylaw now.

Mr. Villeneuve: That is part of the defence.

Mr. Miller: I guess they know out there. It is interesting, we spent a little time in Switzerland with a Simmental tour, and all their cattle out there had bells on.

Mr. Villeneuve: This is a new Canadian farmer from Switzerland. When you first hear the chimes, they sound very nice, thank you. I guess maybe some people do not want to hear them all the time.

Mr. McGuigan: Especially when you are trying to sleep.

Mr. Chairman: On Monday afternoon, we complete the presentations to the committee. Then we will take a short period of time to get updated on the Workers' Compensation Board hearings. That is a very tough scheduling process, so I hope members are here for that. Then we will commence clause-by-clause after that if there is any time.

The committee adjourned at 5:35 p.m.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

FARM PRACTICES PROTECTION ACT

MONDAY, DECEMBER 12, 1988

STANDING COMMITTEE ON RESOURCES DEVELOPMENT
CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)
VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)
Black, Kenneth H. (Muskoka-Georgian Bay L)
Brown, Michael A. (Algoma-Manitoulin L)
Dietsch, Michael M. (St. Catharines-Brock L)
Grier, Ruth A. (Etobicoke-Lakeshore NDP)
Marland, Margaret (Mississauga South PC)
McGuigan, James F. (Essex-Kent L)
Stoner, Norah (Durham West L)
Tatham, Charlie (Oxford L)
Wiseman, Douglas J. (Lanark-Renfrew PC)

Also taking part:
Johnson, Jack (Wellington PC)
Martel, Shelley (Sudbury East NDP)
Miller, Gordon I. (Norfolk L)
Villeneuve, Noble (Stormont, Dundas and Glengarry PC)

Clerk: Mellor, Lynn

Staff:
Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses:

Individual Presentation:
Cummins, Dr. Joseph E., Associate Professor (Genetics), Department of Plant Sciences, University of Western Ontario

From the Conservation Council of Ontario:
Hardy, David R., President
Stewardson, Dona, Chairman, Agricultural Task Force; Representative, Ontario Federation of Agriculture
McRuer, John D., Environment/Economy Consultant

From the Canadian Bar Association--Ontario, Environmental Law Section:
Swaigen, John Z.
MacDonald, Janette M. F., Chairperson

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday, December 12, 1988

The committee met at 3:45 p.m. in committee room 1.

Mr. Chairman: The committee will come to order, as we prepare to continue our examination of Bill 83, An Act respecting the Protection of Farm Practices. We have several delegations this afternoon. When they are finished, we wish to discuss the scheduling for the committee for the workers' compensation bill and the communities we visit and so forth. I hope members can be here for that.

I appreciate the response of the Ministry of Labour to this committee's report on mining accidents and fatalities. That report was to be debated in the House last week, but an emergency debate took its place; presumably, it will be scheduled in the New Year.

Mr. McGuigan: Before you go on with other matters, I see we will have clause-by-clause consideration on Wednesday, December 14. I wonder if the committee would consider inviting the minister to take part in the clause-by-clause consideration.

Mr. Chairman: I think he has been invited and has agreed to come. Am I right on that?

Clerk of the Committee: It is my understanding that he is going to be here.

FARM PRACTICES PROTECTION ACT

Consideration of Bill 83, An Act respecting the Protection of Farm Practices.

Mr. Chairman: Could we move to the first presentation? Joseph Cummins, make yourself comfortable. We welcome you to the committee.

DR. JOSEPH CUMMINS

Dr. Cummins: Thank you very much. I am Professor Joseph Cummins. I have been a professor of genetics at the University of Western Ontario since 1972 and I have been involved in a lot of public concerns about the environment. My background is principally in genetics cancer research, but I do have an undergraduate degree in agriculture and often participate in agriculture-related issues, issues related to ground water pollution from dumps and issues related to pesticides.

I did an exhaustive investigation of various kinds of agricultural pollution. These fall into three categories and include pesticides, air pollution--principally from dust--and open burning, which is a problem in some areas. For example, I have encountered situations in the Exeter area where the bean fields were being burned and creating a nuisance in the way of smoke.

Noise is a problem and this has been recognized in agricultural work since 1958 as being a nontrivial threat to workers and to residents of neighbouring farms.

1550

My main criticism of Bill 83 is that it exempts the nuisance of odour, noise and dust as a result of "normal farm practice" from liability. Normal farm practices are contributing significantly to the load of pollutants in the Great Lakes ecosystem. The bill would have been a major advance in dealing with the environmental pollution or pollution of the ecosystem had the word "normal" been replaced with "best available" farm practices. The word "normal" would formalize existing pollution practices while "best available" would challenge agricultural operators to improve.

My main concern is ecopollution, among others. I have circulated an article from the New Scientist of November 20, 1988. It recounts the extreme problem of ecopollution in Holland where there is an intense animal feedlot production of animal materials. The best estimate is that it takes about 20 pounds of manure to get a pound of meat. As we go more and more to feedlot production of our meat, we produce more and more manure and create greater and greater problems.

I have used this term "faecal crisis" not to be facetious but because I have recognized the problem arising in the European Community in this area. For example, the spread of ecobacteria into the waterways is very, very prevalent in the major waterways. We have had experiences recently in London where older folks were dying from epidemics of toxic bacteria. In Sarnia, young children were permanently injured by their exposure to toxic bacteria. Certainly history and the principles of microbiology clearly show that the route to causing chronic illnesses and diseases is to spread the faecal bacteria around, not to control it. I point out that there are means in modern molecular genetics for carefully pinpointing sources of manure down to single farms, or for that matter even single animals, by looking into the molecular organization of the animals. There are ways, then, of tracking down fugitive releases of manure.

For years I have been stressing that the province should provide an incentive to farmers in the way of a prize for creating an appropriate way of dewatering manure or controlling it. The best available technology now used in Europe has been a deep injection of liquid pig manure, which is suitable but still far from desirable. The liquidy pig manures are a major problem in the waterways and I have collected a file of accounts of numerous spills occurring in my area, in and around Oxford county. In particular, from time to time, the pig shit lets loose, if you pardon the expression, and the waterways are wiped out and you potentially spread illness around. We cannot afford to maintain this. We have to have ways of dewatering the manure and controlling it.

I have also dealt with fertilizers--I am not going to dwell on that--and pesticides. I point out that pesticides such as Atrazine are found at the mouth of the Thames 99 per cent of the time in a five-year period; 85 per cent of the surface waters in Ontario are polluted with Atrazine. In the case of the most current study, 30 per cent of the time the headwaters of the Thames were polluted with 2, 4-D, which is known to produce cancer in human beings.

Pesticides are a problem. They are not particularly addressed in Bill 83, but they are a residual concern.

In terms of dust and noise, dust creates air pollution. It can create severe illness, even death. There is a form of disease called farmer's lung, which is a result of hypersensitivity to certain agricultural dusts. It causes symptoms like severe bronchitis, for example, and recovery takes two to three

months. Recurrent exposure to this kind of dust may cripple an individual and there are many instances of this. Dust exposure is nontrivial.

Non-noise pollution is considered in Bill 83 as well. One problem, as I see it, is that the bill seems to exempt agricultural operators from liability related to exposure of farm workers. There are studies from the United States, where this has been thoroughly investigated, indicating that six per cent to 18 per cent of farm workers have a strong likelihood of incurring a handicapping hearing loss by the end of their working lives. This is a nontrivial issue. Besides producing hearing loss, recurrent noise is shown to produce other problems, emotional problems as well as a variety of other symptoms. Noise is nontrivial; we cannot take it lightly.

One of the criticisms I have of the bill and the manner in which it was proposed was that there was no serious undertaking to evaluate the impact of the main pollutants; odour I do not consider a serious problem, but those of noise and dust I consider to be very serious. The farm worker is not protected by occupational health and safety considerations, as I understand it, nor is he protected by workers' compensation. You are costing him his last recourse by putting in exemptions against liability to these pollutants, as I see the bill.

Studies should have been undertaken in highly urban operations, such as greenhouses, nurseries and mushroom productions, which may be exempted yet may create major nuisance.

Finally, we exempt the liability of nuisance of odour, noise and dust, provided they result from normal farm practices. There was not much of a study undertaken to evaluate the current status of the impact of these pollutants. I think that may be a fatal weakness in the bill as it is proposed. I would have preferred that the term "best available" be used instead of "normal." This would prevent us from legally formalizing destructive processes.

I do have some major concerns which I have not resolved regarding the problem that normal farm practices are exempting farm operators from the injury they do to farm workers. The injury done to the neighbours of the farms in the way of physical injury from the various kinds of toxic dusts and from noise has not really been considered in the bill. As I understand it, these certainly do constitute nuisance, yet they do exempt these farm operators from, it seems to me, serious physical injury from the operation of their farms in a normal way.

Those are the two main points I was trying to get across again: injury to workers and injury to neighbours.

Mr. Tatham: Where do people get hurt on farms? You are talking about injury. What percentage is hurt by dust or noise? What percentages are involved in things of that nature?

Dr. Cummins: All I can say is that I have looked into the matter in the sense that I am aware of studies showing that a significant fraction, up to 18 per cent, of farm workers may be injured by noise on their farm. I have not yet located precise studies on those suffering injury from dust fall and I think this is not so much a weakness of mine as it is a weakness in the bill itself. In other words, we are putting forward a bill which formalizes practices which can be extremely hazardous, yet those proposing the bill have not presented evidence one way or the other in this regard. We have ignored it totally.

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Mr. Tatham: I have been off the farm a long time but it seems to me that in our area—I am from Oxford—we get people hurt from tractors and from machinery and things of that nature, although I am sure there could be some from dust and noise, but I just wondered what percentage. Of the people who are injured on the farm from farm accidents, what are the causes? I just wonder if you have any of the answers there?

Dr. Cummins: I would submit that in a sense the farmer, I believe, is not protected from injury incurred by his employees through the negligence of the farmer, in the sense of a mechanical accident with a tractor or with an agent of that type. As I understand it, if the employee gets a totally debilitating sensitization to certain agricultural dusts, such as a severe respiratory injury, the bill will protect the farmer from being sued by the farm worker or from any liabilities to that farm worker.

It seems to me the bill is taking away the little protection farm workers have.

Mr. Chairman: I think farm workers are covered under the Workers' Compensation Act if there is an injury.

Dr. Cummins: I am sorry, my understanding was that they were not, but I may be wrong.

Mr. Chairman: Perhaps some other members could help me on this but I think that if a worker gets hurt on a farm, he is covered for compensation.

Mr. Miller: Certainly we have labour laws—

Mr. McGuigan: It costs you several thousand dollars a year in premiums.

Mr. Chairman: Agricultural workers are covered for compensation. If they get a debilitating respiratory disease, for example, there would have to be evidence to show that the disease was related to the work on the farm. Maybe that is what you are referring to.

Dr. Cummins: No, the advice I had was that the workers were not covered by workers' compensation. Thank you.

Mr. McGuigan: No, they are.

Mr. Tatham: It seems to me with all these new pesticides and herbicides, I think you could mark suggestions on the cans as what you should do, the gloves you should wear, the masks you should wear and things of that nature. Normally you would do that, if you wanted to carry on and be around for a while. If you did not do that, you would have a problem, but as far as ordinary noise and dust are concerned, I do not know, I am not convinced.

Mr. McGuigan: I would like to make a comment on the noise. I remember reading some years ago that it affects western farmers in particular because they are on very large acreages and spend a long time on their tractors. This would have been before we had the nice cabs on tractors that we have today, that are well-insulated, have stereophonic music in them and air-conditioning and all that sort of thing. I do not see anything wrong with that either.

Mr. Tatham: How big is yours?

Mr. McGuigan: Unfortunately, being an orchard farmer, I cannot put cabs on my tractors because they are working among trees.

Back in the days when we had no cabs, if you looked at western farmers, they were practically all deaf in the left ear.

Dr. Cummins: Yes. That agrees with the study of Nebraska farmers. However, it points out that in 1980 as many as 18 per cent of farm employees will suffer debilitating hearing loss as of the current year. In other words, they have made no cab yet for existing farm machinery.

Mr. McGuigan: Again, just to continue on that, I think it is largely the farmer himself, because there are not many farm employees today except on a few very large farms.

Just to explain the left ear, most people are right-handed and the plows are also right-handed and your plow furrow turns to the right and you are sitting on your tractor driving it this way and looking back at your plow. Gord Miller recognizes that.

The Deputy Chairman: Gord cannot hear what you are saying.

Mr. Miller: Eh? Eh?

Mr. McGuigan: You put your left ear to the exhaust, which is just three feet in front of you. So there is something in what you say.

I would like to follow up on "best available." I tell you, I am sympathetic to that. If you were here on previous days, I mentioned the fact that you could now knife pig manure into the ground. Perhaps that does not solve all of your problems, but it does solve some of them. Also, it was mentioned and we talked about addressing the hog people—the Pork Producers Marketing Board—about putting caps on their liquid manure storages to keep the odour in. They said, "That is the best available technology, except it doesn't work very well." Pig shit is pig shit whether you have a cap on it or not. The smell goes by regardless of that.

It seems to me that using the word "reasonable"—and I would like to get your comments on this—as the lumber people have asked for from the farm community, that "reasonable" somewhere down the line would encompass "best available."

Dr. Cummins: I think the reason I suggested "best available" is from experience with the current status of pollution control throughout other industries where best available technology is the approach. It is the preferred approach worldwide. In other words, the responsibility of the committee would be to establish the best available practice as we would in the best available technology, and it does make one big run together with the forward thrust of cleaning up polluting industries. It is for that reason I think it would be useful to consider the concept of "best available." It need not be threatening to the farmers or anyone else. It is just that "best available" is consistent with the rest of the world of regulation.

With regard to the earlier question, I still think it is interesting to note that if a farm worker can be compensated for an injury from agricultural dust and the injury that flows from that, I would have concerns about the

farmer's neighbour, under those circumstances, who may suffer the same debilitating injury and yet seems to be prevented by Bill 83 from suing the farmer who has caused his injury.

Mr. Black: The term "best available" would still require an interpretation by someone; by the board?

Dr. Cummins: That is right.

Mr. Black: I guess the question that springs to my mind is, best available where? In Ontario? In Canada? In North America? In Europe? Could we be in a position where "best available" could be interpreted as meaning leading-edge technology, the latest development which might or might not have been tested and proven? I would have some concerns on that.

In looking at the existing legislation under section 1, definitions, it does talk there about "conducted in a manner consistent with proper and accepted customs or standards." I wonder if the words "proper standards" there do not have some of the same power and the same connotations that you were suggesting with "best available?"

Dr. Cummins: I do not think so. I think that "proper" would, in effect—and probably in the sense of the board or any court challenges—probably mean practice which exists. The best available would be very promising, for example, if you could develop a very low cost centrifuge for handling these liquid manures, as is used in sewage treatment. Then, certainly, you would want to put forward the thrust to get that kind of practice implemented. Indeed, in Holland they have opened what they call manure banks, and you are given only a certain amount of material you can put into the bank. We do not have any kind of practice like that, but I can foresee that we will be requiring it if we do not solve the technical aspect of handling the manures in a more appropriate way. That is my concern.

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Mr. Black: Would you have any concerns about the use of the words "best available" from the point of view I mentioned previously?

Dr. Cummins: I do not think it would force expensive modification. I do not believe that it would force expensive and unrealistic solutions, as it has not yet done so in heavy industry. In other words, "best available" is acceptable in industrial pollution abatement.

Mr. Black: Are you aware any other legislation that uses that terminology?

Dr. Cummins: Only that concerned with the abatement of industrial discharges and municipal discharges. Best available technology is the catchword and is defined throughout Europe and the United States and used more extensively now in Canada.

Mr. Villeneuve: Thank you very much, Professor Cummins, for making your views known. I do not believe this bill was ever intended to allow farmers to pollute because, in section 2, farmers must not violate land use control laws, environmental protection law, the Pesticides Act, etc. You quite obviously feel, from the statements you have made, that this is not sufficient to protect our environment.

Dr. Cummins: It is obvious from the state of the environment, with extensive faecal pollution in the major waterways, frequent spills, numerous spills per month in southwestern Ontario which are killing fish and polluting the waterways and creating hazard. I would say that we have to improve; it is not adequate.

Mr. Villeneuve: Because effectively, this legislation is to prevent nuisance lawsuits, such as a cow bell situation in the area that I cover where cow bells are annoying someone next door.

But I do not think it was ever the intent of this act to allow farmers to be polluters to a greater degree than anyone else. I guess the mere fact that we are on this planet, we have to pollute--that is part of life, I guess--but certainly keeping it to a minimum. As you see this bill, how strong should this board be? What should this board be empowered with: simply negotiating, or should it have the power to adjudicate, find guilty parties and fine them?

Dr. Cummins: My reading of the bill says that the board may undertake studies. My recollection of my reading of the form of the bill I had was that the board may undertake studies. I think one of the things that should have been undertaken before the bill was in fact passed or considered was a study of the impact of the three major pollutants, in rural and municipal areas affected by the farm activities, to determine the extent of the impact of the pollution.

In other words, what I am trying to say here is that one of the things you pointed out is that cow bells and bird-bangers were brought up in the law, but what I see goes a lot deeper; that is, these injurious dustfalls. I have not seen a clarification of this. I think the impact of these agents should have been quantified. There have been some major efforts in the United States to quantify the impact of these pollutants in the United States. Before proceeding, the board really needs to define what the impact of the pollutants is and then proceed from there.

Mr. Villeneuve: This certainly goes way beyond the mandate of this bill. This bill effectively is to prevent, as I mentioned, nuisance lawsuits. Again, if you could just address the fact of the board, which will be two or three people, or however many we come up with in clause-by-clause. Should this board simply have the power to negotiate or should it go beyond that and have the power to charge someone and fine them in the context of this bill?

You quite obviously do not agree that in section 2 the environment is protected nearly enough and you may be right, I do not know. Certainly, farmers have to follow the law that is now in place, as does everyone else, or be subject to litigation in the courts. This board will be simply a tool to negotiate, it could be quasi-judicial or it could even go beyond that. What would you visualize this board as?

Dr. Cummins: I am fearful of the board, simply because the board is identified as a group of farmers who may indeed represent organizations such as Carnation Farms. It is an experience I had in ??Shannon where Carnation Farms built this supermonstrous great manure pit which promptly polluted all the neighbouring drinking-water wells. My understanding of the Environmental Protection Act is that it is very grey because of the protection under the Environmental Protection Act of the manure practices.

I would say if the board is serious, then it will bring in agricultural

experts and it will be a quasi-judicial board able to implement control orders and assess fines. I do not see any sense in them passing everything on the Ministry of the Environment branch. If they are going to be serious about it, again, they should have authority in the area of agriculture, but they should as well have authority in the area of the environment and they should have substantive quasi-judicial powers.

Mr. Villeneuve: You have answered my question. Thank you.

Mr. Black: I think there is some misunderstanding about the ability of the board to issue orders. It is my understanding that under the Statutory Powers Procedure Act, this board will have the power to issue orders. Those orders would be heard in the Supreme Court of Canada and therefore would have the authority of a court ruling under section 19 of the Statutory Powers Procedure Act. Surely my friend across the room would not want any board to have powers that would go beyond that.

Mr. Villeneuve: I was simply asking the professor, as an expert witness before us, what his thoughts were. I am still not sure that what you say with regard to this board is right.

Mr. Black: That is my understanding.

Mr. Villeneuve: I think we need legal advice on that one.

The Acting Chairman (Mr. Tatham): Next we have, from the Conservation Council of Ontario, Dave Hardy, president, former representative of the Ontario Professional Planners Institute; Dona Stewardson, chairman of the agricultural task force of the Conservation Council of Ontario, representative of the Ontario Federation of Agriculture and on the Ontario Federation of Agriculture's environment committee, and John McRuer, environment-economic consultant.

CONSERVATION COUNCIL OF ONTARIO

Mr. Hardy: My name is Dave Hardy. To the right of me are John McRuer and Art Latrenel, also representing ??Ontario Institute of Agrologists; and to my left, Dona Stewardson. I would also like to point out that we have Beth McKinley with us today, a staff person at the Conservation Council of Ontario. Each one of us represents a different organization and interest on the conservation council.

For those of you who may be unfamiliar with the council, we are an umbrella group representing 33 major provincial organizations, each having a concern about the environment. Each of our organizations has varied interests and opinions. Our members include such diverse groups as the Ontario Federation of Naturalists, the Ontario Federation of Agriculture, the Ontario Professional Planners Institute, the Ontario Medical Association and many others. I believe we have distributed a list of our members. It is attached to our brief.

The purpose of the council is to bring together all these groups on a monthly basis, to debate and consider environmental issues and come up with a resolution of these issues if we can and forward our opinion to either government or industry as appropriate. Our meetings are often fairly rancorous and full of debate, as they should be when there are important issues to be discussed.

The right-to-farm legislation is a good example of where we have had considerable debate on council.

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What we have attempted to do in the brief is share with you those issues where there were concerns among our members but we have not been able to reach consensus, just to give you a broad picture of some of the points that were raised. Those will be followed by the points where we have been able to reach consensus after considerable debate.

I will start with the overall, general role of Bill 83. We have debated Bill 83 at length, and its relationship to other pieces of legislation, the common law, the precedence and application or lack of application of the other various acts.

Some of our members felt that with more severances and land use conflicts these days, the bill was necessary to help farmers. It was seen as one way of dealing with the confusion over which act to use. As a result, a dispute between home owners, neighbours and farmers, if not in violation of other acts or land use control law, would be brought before the Farm Practices Protection Board, where a decision would be made as to whether or not the farm practice in question was normal or reasonable.

On the other hand, others of our members argued that Bill 83 would take away the rights of individuals to sue under common law once the practice was deemed to be normal or reasonable. As a result, the complainant would have no recourse. The right to sue, in effect, would be taken away. Out of all this debate, the only point of agreement among our members is that the rights and recourse questions need to be more clearly addressed in Bill 83.

I will move on to the use of the Farm Practices Protection Board. If the use of the Farm Practices Protection Board were mandatory and all disputes were brought before it before the applicability of the other acts were established, there was some concern among our members about the initiation of a very lengthy dispute resolution process. On the other hand, without the establishment of this board as a necessary step in dispute resolution, some of our members felt that people might be inclined to bypass the Farm Practices Protection Act, thereby weakening the legislation.

Our members are concerned that people may prefer to go directly to statute law, the Environmental Protection Act or the Ontario Water Resources Act and so on, or common law, to deal with more complex issues.

From another perspective, some of our members noted that if the board was voluntary, quick and inexpensive, people might tend to use it instead of going through statute and common law. In this case, the board would be encouraged to maintain efficiency and cost-effectiveness.

I will move on to some of our discussion within council about the definition of "normal" and "reasonable" farm practices.

Some of our members noted that the agricultural code of practice could be used to determine what is normal or reasonable. If a particular practice was normal or reasonable, and if there was an ongoing and active definition of these terms, then the dispute could be solved without incurring lengthy and expensive court costs. In the case where the farm practice was not deemed normal or reasonable, the farmer would be required to change the practice.

It has also been suggested by some of our member organizations that the bill be given greater strength by allowing the board to enforce compliance.

As the board will rule what is considered to be normal farm practice, the definition of these terms becomes very important. Our members also suggested that "normal" or "reasonable" be defined on a regional basis and should take environmental considerations into account.

I will finish these points by going through appeals and some of the points that were raised in council.

In a situation where the parties do not agree on the ruling of the Farm Practices Protection Board, some of our members suggested it would be appropriate to allow a party to appeal through an appeal board or have recourse to common law or statute law. It has been suggested by other member organizations that the appeal board should include representatives of the Ministry of the Environment and the Ministry of Agriculture and Food so that the criteria in other acts could be taken into consideration at that point.

There were other concerns expressed about the Farm Practices Protection Act regarding the individual's recourse after a decision is made by the board. Some of our members felt that the ruling of the board would be final, thereby taking away the individual's recourse to common law or statute law.

That is kind of the range of the concerns that were expressed and debated in council where, for the most part, we did not reach consensus.

We were able to reach consensus on the following points, and these were communicated to the Minister of Agriculture and Food (Mr. Riddell) following our April 1988 meeting.

1. There are several conflicting pieces of legislation here—other than Bill 83—which potentially affect farm practices. This is a confusing situation and it disturbs both farmers and environmentalists and should be remedied.

2. Members of the Farm Practices Protection Board are to be chosen by the Ministry of Agriculture and Food. This will not necessarily result in an impartial review body of farm practice nuisance complaints, since the farming community and not the environment is the primary client of the Ministry of Agriculture and Food. We recommend that members of the Farm Practices Protection Board be chosen jointly by the Ministry of Agriculture and Food and the Ministry of the Environment and that the board consist of at least eight individuals.

We did receive a response from the minister on this item, basically to reassure that yes, the Ministry of Agriculture and Food is concerned about the environment, and that is fair, but we feel that the issue here is one of trust and confidence and we stand by our earlier recommendation.

3. The Farm Practices Protection Board should contain a fair regional representation of knowledgeable, active farmers to ensure that members are acquainted with the range of normal farm practices currently employed in the various agricultural zones of Ontario.

4. As presently stated, two members of the board, one being the chairman, will constitute a quorum. We consider this to be an insufficient number to provide a fair and balanced hearing of any given case, particularly

in light of the requirements for the various sides to be concerned, as stated previously.

5. The Farm Practices Protection Board must have at its disposal an updated and expanded version of the agricultural code of practice prepared jointly by the Ministry of Agriculture and Food and the Ministry of the Environment. We feel that the present document is outdated and deals only with a limited range of contaminants under a limited range of circumstances. Farming technologies and practices have been changing rapidly, while Ontario's environmental standards are becoming tougher. In light of these changes, it is incumbent on MOE and OMAF to review regularly which agricultural practices are to be considered acceptable and normal. Without explicitly stated guidelines, the term "normal farming practices" as employed in Bill 83 is virtually meaningless.

6. We recommend that a stipulation be incorporated into the proposed legislation to the effect that complaints will be dismissed if they arise out of sound farming practices carried out with all reasonable care. Such an amendment will reinforce the need for a regularly updated agricultural code of practice.

Now, in this brief we have attempted to provide you with a range of concerns of our member organizations and also the points to which our member organizations could reach consensus.

If the intensity of the debate in the conservation council last spring is any indication of the intensity and difficulty of the issues that you are facing now, we are sympathetic to the problem of determining what is wise and right public policy on this matter. These are our views and we hope that our remarks are going to assist you to come to terms with these issues.

Mr. Wildman: I am interested in a couple of things. I agree with your comments regarding the code of farm practice, but could that not be partially resolved by changing the term "normal" to "reasonable" in the bill, since what might be normal in a particular area, in light of new information regarding environmental concerns or new technologies, might not in fact be reasonable?

Ms. Stewardson: That is just one of the reasons that we feel there should be people from all different regions of Ontario on this board, wherever the complaint comes from. In eastern, northern and southwestern Ontario we farm differently, so what would be deemed normal or reasonable in one area definitely is not in another one.

Mr. Wildman: That is why I am making the differentiation between the two terms, because what is normal in one area might in fact be outdated and outmoded in another area, and perhaps it should be in the area where it is normal.

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Mr. McRuer: To respond to that, the notion of reasonable is very unclear in terms of whose reason is concerned.

Mr. Wildman: That is true.

Mr. McRuer: From an environmental point of view—and this is what we are about at the Conservation Council of Ontario—we are concerned with the

long-term sustainability of the farming ecology. One of the things that concerns us a great deal is the fact that this may be going down the tube because of normal, reasonable practices. What we would like to have in the definition is a code of environmentally safe practices, rather than leaving it to being "reasonable."

Mr. Wildman: I understand. There were two other things I wanted to comment on. First, I agree with your view regarding the quorum. It seems to me rather inadequate to have two people, particularly if the two cannot agree. Then what? I mean it would be nice to have an odd number so you can at least have a majority vote.

The second thing is in regard to enforcement. It has been suggested by others who have appeared before the committee that perhaps there should be a provision in the bill for two things: (1) Assistance by the board in helping farmers to comply with orders that have been issued by the board and, (2) a system of fines that could be levied if an individual flagrantly disregards orders that have been issued by the board. You were not able to reach any consensus on that? That was suggested by one group, by the Ontario Federation of Agriculture.

Mr. Hardy: We were not able to reach consensus on the matter of enforcement. What causes us the greatest difficulty is, I suppose when we talk about enforcement, we also need to bring in the roles of other acts and appeals and so on and it was quite unclear to us, as the act is worded, how to proceed on that matter.

Mr. Wildman: They suggested adding a clause, which would make it possible, for instance, that if a matter had been considered by the board and an order issued and an agreed person then subsequently brought the matter back before the board and they found that the order had not been complied with, rather than having to go to court, that individual could bring it again to the board and the board could levy a fine on the individual who had not complied with the order.

Mr. McRuer: I would like to point out that hidden under this is a fundamental issue in sustainable development as promoted and described by the World Commission on Environment and Development and that is the short-term versus the long-term conflicts. In the long term we want to have a clean, sustainable agricultural community. In the short term, we probably do not have it. In going from the short term to the long term, there has to be a process that recognizes the difficulty. The farmers down the road from me discharge their farm sewage straight into the Nith River.

Times are not great, agriculturally, these days. There is not enough money to deal with that by that particular farmer. If he does, there is no return on that investment for him.

This problem has to be recognized by the society at large; that means the government. The government has to recognize the issue for what it is. It has to set an appropriate target. It then has to be able to enforce it and make sure that the consumers pay the costs rather than—it could be done through taxes or it could be done by making sure that the price reflects the real cost, and it has to provide a humane and sensitive process for shifting from where we are now to where we want to be.

Mr. Wildman: Certainly I agree with you in the sense that the government could institute things like the land stewardship program, for

instance, to improve farm practices and to assist farmers to improve their practices, but surely in that case you have suggested, if someone had brought a matter before the board and the board had considered everything—

Mr. McRuer: No, but that is the normal practice.

Mr. Wildman: —and heard everyone and said: "This is normal practice, but it is not reasonable to be polluting this water. Therefore, you should stop." If he did not stop, then surely they should have some way of enforcing it.

Mr. McRuer: He says it is reasonable and so do all the other guys around there.

Mr. Wildman: But if the board said it was not, that is what would count.

Mr. McRuer: Yes.

Ms. Stewardson: I think we have to take into account that what is reasonable is something that is not polluting the environment and the farmers are the first people—we are environmentalists, first off.

Mr. Wildman: Yes, I agree with you there. Thank you.

Mr. Black: There was just a comment I made previously—I think Mr. Wildman had not arrived at that point—and that is, under your definition of normal farm practice, I wonder if the words "proper and accepted" do not have connotations that suggest or strengthen the definition of normal to include "proper."

Mr. Wildman: "Proper" does, but "accepted" may have the problem in it that I suggested.

Ms. Stewardson: Accepted by whom?

Mr. Wildman: It could be an accepted practice that had gone on for many years in the farm community in that area, but it may not be proper.

Ms. Stewardson: That is what we would like to know.

Mr. Black: I recognize that, but I was assuming, the way it is worded here without punctuation, that the practice must be proper and accepted, which would suggest that it then has some connotation of quality control to it.

Ms. Stewardson: We in our organization want to know, accepted by whom? The general public and fellow farmers? That is the sort of question we want to ask.

Mr. Black: I hear your point. In the following section, we have a list of legislation talking about the Environmental Protection Act and the Pesticides Act, so that does establish some standards.

Mr. Villeneuve: Those are the standards.

Ms. Stewardson: Right. We have to follow all those in our current farming practices and I cannot see why a person cannot still be charged under

those, even if the Farm Practices Protection Board says you still are not following those.

Mr. Wildman: According to this bill, you can be.

Ms. Stewardson: Charged?

Mr. Wildman: Yes.

Ms. Stewardson: If they are guilty of those, then—as we say, we are not asking for a licence to pollute.

Mr. Hardy: I guess that raises our first recommendation about what we need to clarify, the various acts as listed here.

Mr. Black: Maybe I did not make myself clear, Mr. Chairman; I will try once again. When we have those acts listed in this legislation, it seems to me they set the standard. When we use the terms "proper and accepted" followed by those pieces of legislation, is there not an element of quality control in there in terms of protecting the environment?

Mr. Hardy: I would say yes, there would be. On the face of it, I would think, though, that there is some difficulty that still exists, whether it is a workable process of quality control.

Mr. McRuer: The very name of the Farm Practices Protection Board works against quality control. We are interested here in farm practices, not in protecting farm practices. We are interested in keeping the standards up, not protecting bad standards. I think the bill would not suffer at all if that word "protection" were deleted from the name of the board.

Mr. Wildman: Yet, you argued a moment ago that your neighbour, who is polluting a river, should be able to continue polluting it.

Mr. McRuer: I say, he would argue, not me.

Mr. Wildman: I misunderstood you.

Mr. Brown: I was just going to follow on Mr. Black's points. It seems to me that what we are talking about in this bill is nuisance, things that do not violate any of the other acts that are actually laid down in section 2 and, I suspect, in others.

What we are talking about is nuisance as it relates to odour and noise. The difficulty you are having is resolving that, I guess.

Mr. Hardy: Yes, it is.

Mr. Brown: So if there is a protocol between the Ministry of the Environment and the Ministry of Agriculture and Food and how that is resolved, that makes you slightly more comfortable?

Mr. Hardy: I would say slightly, yes. The possibility still exists for some confusion and perhaps even picking and choosing which legislation you would choose to deal with the nuisance. Then, once you have picked your particular piece of legislation and did or did not get your day in court, how the appeal goes and whether there are other pieces of legislation you then choose at that point.

I think our concern is not only for the agricultural economy, but it is also for a workable policy and a workable act. It seems to us that there were significant areas of ambiguity, as relating to this act, to other pieces of legislation.

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Mr. Brown: If I could maybe encapsulize what I view this act as doing, it means that if a farmer one concession over from me is operating the same operation as me and the only difference is that I happen to have some urban dwellers right next door, I can farm the same way he can a mile and a quarter over. I think that is the intent of this act. Would you comment on that?

Ms. Stewardson: Exactly. We mentioned that there is a protocol of understanding that comes into effect—and I am sure you are probably all aware of that—between the Ministry of Agriculture and Food and the Ministry of the Environment, and when this board is appointed, that comes into effect. That updates our agricultural code of practice more or less. They have updated this protocol of understanding to ministries. So that would help.

Mr. Villeneuve: I thank the Conservation Council of Ontario for its presentation. I think when we talk about polluting water and the pollution of manure pits running into streams, it is definitely not allowed nor will it be allowed. We are talking odour, noise and dust, and manure has odour. Certainly this legislation will never allow a farmer to run the manure into a watercourse or anything. That is not a normal or a reasonable practice.

I think we are kind of hooked into something here that is beyond the mandate of this bill, because you have to live within the land use control law, the environmental protection law and all the rest of it. We are talking odour, noise and dust, basically. What is reasonable or normal in those three areas? I think we are trying to prevent nuisance lawsuits in the area of odour, noise and dust.

Certainly I would not want farmers to have a blessing to run manure into watercourses or anything like that. We are talking about things that are well beyond this bill, and if we do not have environmental laws that are tough enough, well, let's toughen them up to make sure, but that is way beyond the mandate of this bill. That is the way I see it.

When you say you want to regionalize what is normal or reasonable, could you just expand on that a little bit? That is a grey area.

Ms. Stewardson: Of course, you are from the east and I am from the southwest and our farming practices are different. I suppose, in a way, they are not; you cannot put, as you say, manure down the stream. But we thought if you had a farmer from that region on the board, not necessarily to be on every board, but if the case was to be heard in that region, to make sure there was a knowledgeable farmer from that area to see if that was something reasonable within your own area.

Mr. Villeneuve: Mr. McGuigan and I got into a little discussion the other day that he would not spread manure if the wind were blowing in the wrong direction and I know he lives in an area where they may still be plowing down there. I can assure you that under my carport this morning it was minus 28; nobody is plowing at home. That is one of the reasons we have to do it a little faster. Sometimes the wind is going in the wrong direction and what

might be a normal or reasonable farm practice in the east or the north, where our season—

Mr. Wildman: As long as it does not get blown back on you.

Mr. Villeneuve: That happens too.

Mr. McGuigan: Every sailor learns not to spit into the wind.

Mr. Villeneuve: The other area I want to get your opinion on is the board. In your opinion, should it be mandatory for every case to go to the board first as a matter of protocol or whatever? Should every area of breaking the law in the odour, noise and dust area come to this board first or should someone say, "I know he does not qualify under the Environmental Protection Act and therefore I'm going to the courts," and be able to bypass the board? What is your opinion?

Ms. Stewardson: I think it should go to the board first and then if he is found to be guilty, he is shot out under section 2 here.

Mr. Villeneuve: He may be found to be not guilty by the board and still be guilty under the Environmental Protection Act.

Ms. Stewardson: There are still all kinds of common laws and all these things; you could still appeal.

Mr. Hardy: I think it is an area where the council has not come up with a recommendation and has not reached consensus. We have heard quite a few different views on council and unfortunately we have not been able to work it out, to be quite honest.

Mr. Villeneuve: My following question would be that if indeed you had every case go to the board first and should it wind up in the courts of the land, would it be a trial de novo whereby all that was said at the board level would be totally disregarded or could part of that form part of the case that goes on?

Ms. Stewardson: I feel it would have to be part of the evidence to try to prove that it was a reasonable or normal farm practice.

Mr. McRuer: I would like to feel that there is always an avenue for appeal to the courts. I think that is consistent with the McRuer commission of some years ago. Every arbitrary board has a channel from there to the court. I know it is a fact in the Health Disciplines Board. If that is true then it is less sensitive to whether it is first through the Farm Practices Protection Board or not.

Mr. Villeneuve: I think that is probably a constitutional question which some of our learned friends in the law could advise us on. I think we may be enlightened with the next presentation that comes up.

Mr. Chairman: We should proceed to the next presentation. Are there a couple of short questions people had? If not we should move on.

Mr. Miller: Mr. Chairman, I just want a definition. A pile of manure is a resource. To a farmer it is just like money in the bank. I just want you to know that if it runs off—you do not want it to run off either because you are losing a resource that is going to produce another crop. I think that is

the way a farmer assesses a pile of manure. That is his; instead of a pile of fertilizer, you have a pile of manure.

Ms. Stewardson: Could I just make one comment? I have heard about water and how many pesticides and chemicals were in it. After seeing this mentioned, it is my understanding that we have not been found above 10 parts per million which is probably found in every stream but not above drinking water standards.

Mr. McGuigan: I just wanted to put a comment on the record. I have been sympathetic, along with all of my colleagues, to the idea of putting in "reasonable" instead of "normal" but the people in the Ministry of Agriculture and Food point out to me that the words "normal farm practice" do not really in themselves mean much. It is the definition that follows that says, "consistent with proper" and then "accepted." It is not either/or, it is "proper and accepted."

I am sure that over time you would have people on the board who would be enlightened and who would say, "Hey, this ain't proper any more. You have to upgrade your operation," such as even going to best available technology when it is available and it is economical. I am sure you would have people on the board who would use this word "proper." The other fear that they have, and when it is explained to me it seems reasonable--

Mr. Black: Or proper.

Mr. McGuigan: It seems sensible. Noise is where I get most of my problems from my neighbours. Eventually the bottom line for me is, I have to carry out this operation. I have mitigated it in every way I possibly can. I have tried to be as sensible and neighbourly as I can, but I still have to carry it out. Then the other person says, "Yes, but you are being unreasonable." Reasonableness is used in a different context. They say, "You are being unreasonable because you will not stop doing that." This is their fear in the matter of changing it from "normal" to "reasonable" or unreasonable, as the case may be.

I think all of us should take a harder look at this definition.

Mr. Hardy: In a sense, our fifth recommendation about the tying in of the agricultural code of practice is one attempt to do that, to have an ongoing definition of those terms.

Mr. Chairman: Thank you very much conservation council. We appreciate your presence.

Mr. Villeneuve: Jim, you keep getting re-elected, so you must be reasonable.

Mr. McGuigan: I think so.

Mr. Chairman: His immediate neighbours may not vote for him, though.

Mr. McGuigan: No one has ever caught me being improper, anyway.

Mr. Chairman: Our next presentation is from the Canadian Bar Association-Ontario section. Welcome to the committee. You have already heard yourself referred to as learned, in the last couple of moments.

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CANADIAN BAR ASSOCIATION-ONTARIO

Mr. Swaigen: My name is John Swaigen. I am a member of the environmental section of the Ontario branch of the Canadian Bar Association. Although I do some other things now, for 14 years I restricted my legal practice to environmental law. Janette MacDonald, who is with me, is the chairperson of the environmental section. She has also practised environmental law for many years, both with the Ministry of the Environment and one or more oil companies, and has been their environmental specialist. She was also a member of the panel established by the government to review the regulations under the spills bill around 1985, when that was being promulgated.

Janette is just as knowledgeable about the legal environmental issues as I am, but Janette has very kindly asked me to speak since I am the principal drafter of the brief by CBAO, which has been given to you. That was something that was sent to the Minister of Agriculture and Food back in June of this year.

I am going to start by doing something a good lawyer should never do, which is to ignore the fact that all the parties of the Legislature have agreed that this bill is a good thing and that many of you are farmers and to suggest to you, notwithstanding that, that the bill is not really needed.

Mr. Wildman: Excuse me. There was a voice vote on second reading. There was opposition expressed in the House on second reading.

Mr. Swaigen: I stand corrected. With the greatest of respect, I am--

Mr. Dietsch: And we are not all farmers.

Mr. Swaigen: No, I know you are not all farmers.

Mr. Chairman: Carry on, Mr. Swaigen. Ignore the interjections.

Mr. Swaigen: I just heard a number of people say they were farmers. I have not heard anyone bragging they were not farmers yet.

To a great extent, with the greatest respect, this bill presents a cure for a problem that does not exist or an illness that does not exist; the problem that is perceived being ex-urbanites suing farmers in the law of nuisance for matters that are merely an inconvenience to them or a discomfort to them, but do not create any real harm to them. All I can say is that in my 14 years of practising environmental law, I have not seen any evidence of such lawsuits in this province. I have no doubt that there are a lot of complaints to municipal councils and to other authorities about these incidents but no civil nuisance suits or perhaps one or two that I am aware of in Canada.

A person who would use the courts for that purpose would either have to be extremely wealthy or extremely foolish or both, because the cost of a nuisance suit is prohibitive and the nuisance suit would be unsuccessful under the circumstances that I think the farmers are concerned about, which is the ex-urbanite coming and complaining about the manure odours during the fall or spring, for example.

The other great concern I have about the bill is its erosion of common-law rights and remedies. In some respects, this bill may even go

further than the rather infamous legislation brought in by the Conservative government to protect the pulp and paper industry and the mining industry from civil suits, a lot of which only prevented the seeking of an injunction but still allowed people to obtain compensation for harm.

I am not clear about this bill. I have read it a number of times and it appears to me that the bill could be interpreted not only to take away a right to shut down the offending operation, but also completely eliminate the right to damages.

Having said that, I accept that the bill is going to pass, and I would like to suggest some amendments to the bill that flow out of the letter we had written to the Minister of Agriculture and Food.

I might say that the Saunders case which was referred to in Hansard is not an example of a nuisance suit against a farmer. For various reasons, partly because the complainants in that case were asked not to discuss it in the media while it was before the courts and partly because the matter was settled, a lot of the facts in that case have never come out.

Among those facts is the fact that the neighbours of that farm lived beside that farm very peaceably with the farmer for many years, even for decades before Mr. and Mrs. Saunders moved there, and were quite happy.

Another fact which has not been publicized by the Ontario Federation of Agriculture in all the publicity it has sought over the case is the fact that when Mr. and Mrs. Saunders purchased the property, they added grapes to the existing cherry orchard, which they planted right up to the property line.

Another fact which has not been discussed in the media, which is probably where members are getting most of their information, is the fact that the bird-bangers were not being used in accordance with the manufacturer's or distributor's instructions.

There is a lot more to the Saunders case than has come out, including the fact that the Saunders's lawyer was not paid for by Mr. and Mrs. Saunders but by the Ontario Federation of Agriculture, which did not want the lawyer and Mr. and Mrs. Saunders to settle the case, for obvious reasons.

Mr. Wildman: You mean settled out of court?

Mr. Dietsch: I missed your last comment.

Mr. Swaigen: There was a control order issued that was to be considered by the Environmental Appeal Board. The Ministry of the Environment and Mr. and Mrs. Saunders agreed on an amendment to that control order which avoided the Environmental Appeal Board having to hold a hearing. At the same time, the charges were dropped against Mr. and Mrs. Saunders. Those are charges under the Environmental Protection Act. There was no civil suit. This bill is intended to prevent civil suits. There was no civil suit against Mr. and Mrs. Saunders.

Mr. Dietsch: I do not mean to interrupt, but I was trying to get at what I thought I heard you say, that they did not want the Saunders to settle for some other reason. I just wanted to be clear what I was hearing.

Mr. Swaigen: Yes. I am suggesting that the OFA, which was paying the Saunders' lawyers, wanted the Saunders to continue to be before the courts and before the board as long as this bill was before the legislature.

Mr. Dietsch: That is what I thought you said.

Mr. McGuigan: A clarification point too. I am a cherry farmer and have bird-bangers. I do not get in trouble with my neighbours about them, either. You said it was not being used according to the manufacturer's directions. Do you have any clarification of that?

Mr. Swaigen: It was being pointed away from most of the grapes and right towards the neighbour's property. I am not suggesting that was deliberate, but the distributor, when he was shown where and how it was being used, was not supportive of that.

Mr. McGuigan: That is a fact? I assume it is.

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Mr. Swaigen: The key problem with the bill is the problem that has been pointed out by a number of other groups, which is that the bill protects any farming practice that is normal whether the farming practice is necessary, whether it is efficient, whether it is reasonable or whether it is harmful to human health or destructive of property.

In our letter to the Minister of Agriculture and Food we pointed out that problem and that the test should be one of reasonableness. I know the Conservation Council of Ontario, the Canadian Environmental Law Association in its brief, Dr. Cummins and the Ontario Federation of Agriculture have also suggest to the committee that the test be some form of reasonableness rather than normality.

I would caution the committee to be very careful of the definition of reasonableness put forward by the federation of agriculture because if you look carefully at that definition, what the federation of agriculture seems to be doing is saying reasonableness is normality except that it is also required that you use innovative technology. They are defining reasonableness to include potential unreasonableness unlike the other delegations that I am aware of that have suggested that reasonableness should mean reasonableness and that should be the test.

The simplest way to deal with it is to just change "normal" to "reasonable." I would urge the committee that if it only made one amendment to the bill, to make an amendment that brings into play some kind of test of reasonableness. I would suggest that test of reasonableness not only include innovative technology but also include best management practices, because often the problem that arises is not a problem of using the wrong technology. It is a problem of not using the best kind of housekeeping or management practices.

The second concern about the bill is that it goes far beyond what I believe—having listened to Mr. Villeneuve over the past few minutes—the farmers and the Legislature thought they were intending to do with this bill, which was to take away a right, but to take away a right that was not an extremely important right; that is, the right to sue over things that are merely an inconvenience or cause discomfort. As I understand it, that is why the farming community is so upset. It is because people harass them over things that are not going to harm them in any way but which are aesthetically offensive to them.

To that extent, the bill makes sense, but what the bill has done,

perhaps inadvertently, is to go way beyond that. The bill prevents suits for all nuisances. You have to remember that in the legal sense, nuisance does not have the same meaning as it does in the everyday sense. It does not just mean an inconvenience or an annoyance. In the legal sense, a nuisance is any kind of harm caused by one neighbour to another.

What this bill does is that it not only protects the farmer against the suits for inconvenience and annoyance, it also strips people of their right to sue the farmer over harm to their health, physical damage to their property and physical damage to vegetation and wildlife.

As I say, from everything I have heard, I do not think that is what the bill was intended to do, but I suggest to you that is exactly what it does do.

I have handed out some amendments that I scribbled down yesterday. I was just going to talk at you about them, but I thought it might be better to give you my handwritten scrawls, which is at least better than just talking at you. I apologize for the handwritten insertions.

I have suggested that one way to deal with that problem would be, if you are going to keep the definition of "normal" that you have now, to at least limit the bill to taking away the right of people to sue for those things, like bad odours, that bother people but do not do them any real harm or, like dust, that may be unaesthetic but do not harm health.

The other aspect of that is amending the definition of "normal farm practice." Clause 1(h), as has been pointed out in our brief and elsewhere, is so broad that it protects licensed pesticide sprayers who destroy neighbouring vegetation or human health through overspraying. I have suggested that that be dealt with in three ways.

One is by limiting the immunity from suit to the farmer himself rather than commercial sprayers and the second is by removing pesticides from that list, because pesticides are of course inherently dangerous substances. They are intended to kill target organisms, but anything that is going to kill a target organism always has some potential to kill nontarget organisms. Third, I have suggested that the committee might consider—

Mr. Wildman: I am sorry. I have a question. Surely the bill deals with nuisances related to odour, noise or dust?

Mr. Swaigen: That is why one wonders why protection of pesticides is in there to begin with, because surely, any time you have a dust or an odour containing a pesticide drifting on to someone's property, is there not inherent in that some potential for much greater harm?

Mr. Wildman: Surely in the bill, if it were enacted, someone who felt there was a problem could take it to the board.

Mr. Chairman: I think we should let Mr. Swaigen finish, because we are quickly running out of time.

Mr. Swaigen: I have also suggested that you might consider not giving this kind of protection to aerial application of pesticides because it is well known that aerial application of pesticides is very difficult to control and inherently much more dangerous than ground applications. Aerial spraying of any kind, I would suggest, is inherently much more dangerous. The problem of drift, as you know, is almost impossible to control in aerial

spraying. That has been well recognized by the National Research Council and others.

Mr. McGuigan: On that point, though, there are a number of pesticides that are prohibited for aerial application.

Mr. Swaigen: Yes.

Mr. McGuigan: Your point may be already covered.

Mr. Swaigen: With respect, there are a lot of cases where people have been harmed and vegetation has been very seriously damaged and soil destroyed by overspraying from the air of pesticides that are allowed, because it is very difficult to control the aerial spraying.

Mr. Chairman: Let's let Mr. Swaigen finish his presentation so there is time for questions.

Mr. Swaigen: The final concern, and I know this has also been raised by a number of different groups in its different aspects, is the composition of the board. The name expresses the board's concern. I hope that you will have the courage to maintain the name if you are going to maintain what it does and not change the name without changing the nature of the board or its composition.

I am somewhat concerned about the suggestion that the board be limited to farmers, which I believe the Ontario Federation of Agriculture has suggested. If the board does find a farming practice that is normal but which could be changed so that it does not put the farmer out of business but still does not harm neighbours, why will the board not have the power in that case also to order that the practice be improved?

The point is a good one, I think, that the board should have the power to make orders and to enforce its orders if it is going to be this kind of board, but why should the orders be limited to this circumstance? What you are saying in this bill is that if a farming practice is normal but it is not necessary that it cause all the inconvenience or harm that it is causing, the person cannot sue civilly, nor can the board help him. In other words, he can do nothing as long as it is determined that the practice is normal.

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Among all the other concerns about the makeup of this board and its powers, I strongly urge that you consider giving the board the power to order improvements even in normal operations if they are harming people. Otherwise, as I say, you have simply taken away all their rights.

The only thing I would like to add is that my understanding, and this may be wrong, is that the federation of agriculture has also urged that the right of government to prosecute for infractions of various pieces of legislation be taken away.

I would like you to understand that if you accede to that request, you are going beyond protecting the farmer from suits for non-negligent behaviour and you are also immunizing him from prosecution for negligent behaviour, because in all of those statutes, the farmer cannot be convicted if he shows that he has not been negligent. If you accede to that request, then you are encouraging and allowing negligent behaviour as well as behaviour that cannot be avoided.

Thank you very much. If there is any time, I am sure we would be happy to answer questions.

Mr. Chairman: Thank you. Three members have indicated an interest in asking a question, I believe; Mr. Wildman, Mr. Johnson and Mr. Dietsch.

Mr. Wildman: In response to your last comment, I may be prejudging, but I do not think there is anyone on the committee who is prepared to accede to a request that would do what the Ontario Federation of Agriculture has suggested. I may be wrong in that, but I certainly do not think we are here to exempt the farm community or anyone else from environmental protection law. As a matter of fact, the OFA itself said that it did not want to have a bill that would give it the licence to pollute.

In regard to your comments about "normal," we have had some discussion on the committee. I agree with you that it would not make sense just to change the term "normal" to "reasonable" without giving a definition of what is meant by "reasonable." If you had a definition which said "proper, efficient and effective farming methods, customs or standards that employ modern, innovative technology and advanced management practices," would that in any way go towards meeting your concern?

Mr. Swaigen: Yes, it would; it would go a long way towards meeting my concerns.

Mr. J. M. Johnson: I think one of the biggest problems we have is that it is going to be extremely difficult to define "reasonable" and "normal" to the satisfaction of both farmers and their neighbours.

In the third paragraph of your Farm Practices Protection Act definition, it says, "The law of nuisance is that a person may not use his land in a way that unreasonably interferes with his neighbour's reasonable use and enjoyment of their property."

How can a farmer do his normal farm operation—for example, spray manure on his field—when the neighbour is having a barbecue? One is normal and reasonable for the farm operation, and the other is normal and reasonable for the person living in that home.

I think we are at the point that because we have allowed those severances and allowed those people into the countryside, they have to accept the fact that they are living in a farming community and they have to accept the fact that at certain times of the year they cannot have a barbecue without putting up with the nuisance. You cannot both have reasonable alternatives in a situation such as that.

A few weeks ago, I was at the opening of a senior citizens' complex; all 27 units face out on a field with 300 or 400 acres of agriculture 15 to 20 feet from the sliding patio doors. I know right today that there will be problems as soon as spring rolls around. Yet that is one of the problems we have in the countryside.

If you allow severances, then the people who accept those severances should do so knowing what they are accepting. The problem usually is not the first owner, it is the second or third owner of the property who complains. I am only talking about odour, noise and dust, for example, I am not talking about deliberate pollution in streams or that.

Would it make any sense to have registration and title so that people buying that piece of property know what they are buying? They realize that this type of farm practice has been going on for the last 20, 30, 40 years and likely will continue.

Mr. Swaigen: I think it would make a great deal of sense. My concern about this bill is that it goes way beyond a lot of the American bills which protect the farmer if he was there first, but recognize that if the farmer moves into a builtup area, or changes his business after the area is builtup in a way that is much more of a nuisance than previously, then a lot of the American statutes would not give the same protection to the farmer.

This bill does not seem to look at whether the farmer was there first or whether the urban community was there first. Certainly that would be helpful. I suspect everyone agrees, at least in theory, that the real problem is one of land use planning and that the real solution is to prevent incompatible uses from being beside each other. Except we all know that, in practice, it is so difficult to implement.

Mr. J. M. Johnson: Sometimes there is a problem with gaining the necessary land, and I mentioned the senior citizens' complex, and this was the only property that was reasonably close to the downtown section. I think they deliberately selected it. I still maintain that there could be a problem in the future. I wonder if there is not some way, in situations such as this, whereby those people would accept what is going to happen in the spring, because it is a normal and reasonable operation that has existed there for half a century.

Mr. Swaigen: Whether they accept it or not, though, there is no court, under that circumstance, which is going to award an injunction or damages in the law of nuisance against the farmer and there is no court that will convict the farmer of a violation of the Environmental Protection Act, unless he has been negligent. There would be a lot of screening.

Mr. J. M. Johnson: In your definition, Mr. Swaigen, you say that the one party cannot interfere with his neighbours' reasonable use and enjoyment of their property. This is exactly what is going to happen. This definition does not fit the bill, does it?

Mr. Swaigen: Well, there is a gloss on that which you will find in the written brief of the Canadian Environmental Law Association. I did not go through all the details of the law of nuisance; I just gave the basic doctrine. The law of nuisance goes on from there to say that in determining what is reasonable, you also look at the prevailing character of the neighbourhood and the uses that are there. If there is a temporary odour situation in the spring and the fall, for example, the law of nuisance would not provide redress for that, because that is part of the character of that area.

The Vice-Chairman: Mr. Johnson, I would like to remind you of the time frame. Other members are on the list.

Mr. Dietsch: Thank you. I just want to get some clarification and perhaps correct the record from what I thought might have been a misunderstanding, or perhaps it is not a misunderstanding, on my part. Perhaps you did indicate it. First let me ask you, did I understand you correctly to say that you had read the Ontario Federation of Agriculture's comments in Hansard?

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Mr. Swaigen: No, I read the comments of Mr. Wildman, Mr. Villeneuve and the minister, I think it was, in Hansard. I am not sure if that is correct.

The Vice-Chairman: The second reading.

Mr. Dietsch: The second reading, some time ago. Okay, I thought you had indicated that you had read the OFA's comments in Hansard and that is what I did not understand.

Mr. Swaigen: No, I would be a little surprised to find them in Hansard.

The Vice-Chairman: I think you would be referring to their presentation to this committee but those Hansards have not published as yet.

Mr.Swaigen: No. What I saw from the OFA was a handout that the OFA did after first reading, setting out its position on the bill.

Mr. Dietsch: I would suggest to you that you are in error when you point out that the OFA was paying the total Saunders case in respect of keeping the case before the courts. The OFA was contributing towards the cost of the Saunders case because of the burden of some $18,000 in legal costs, plus the cost of losing three crops as well.

More particularly, I wanted to clearly understand: do you feel that this bill will interfere with the common law? Is that really in essence what you are saying?

Mr. Swaigen: It will be more of a symbolic interference than an actual interference because the kinds of concerns--at least in so far as harmless odours are concerned--that the bill is intended to meet are not the kinds of concerns that the law of nuisance would redress anyway; but if the bill goes farther than the bad odours--as it does in my submission--and also exempts farmers from any kind of suit for destroying human health, vegetation, animal life or property, then it will very seriously interfere with common-law rights and remedies.

Mr. Dietsch: I am not a lawyer, and I do not profess to be, but do the courts rule on symbolism?

Mr. Swaigen: No.

Mr. Dietsch: Do they rule on law?

Mr. Swaigen: Yes, that is right. If this bill were amended to make it clear that it is not intended to protect from suits where serious harm to health and the environment are concerned, then the interference in my view would be largely symbolic. That concerns me because we all deal in symbolism, but it does not concern me as much as that kind of reality where the courts cannot protect peoples' health or their property.

Mr. Dietsch: I think I have deciphered between symbolism and law without even being a lawyer.

Mr. Villeneuve: I see where the headline in the paper should also have the word "symbolism" there as well, should it not, if that is the case?

Mr. Swaigen: Again, it depends. As I say, if the bill is primarily intended as a symbolic measure to show farmers that they are being protected from suits about odours that cause some discomfort, that is one thing; but if the bill as it is now drafted goes so far as to take away the right to protection of your health and your property, then it goes far beyond symbolism.

Mr. Villeneuve: There is a nuisance court case, and I have to think that it is now occurring, regarding chimes that dairy cows and dairy heifers are carrying. It is signed by a solicitor in my riding and it reads in part, "The enclosed bylaw is the one under which my clients are being prosecuted," and it has to do with chimes. So indeed there is one, and it will be worth watching.

Mr. Swaigen: With the greatest respect then, that is not a civil nuisance suit. That is prosecution under a bylaw, which this bill does not prevent.

Mr. Villeneuve: That is interesting.

Mr. Swaigen: What you are reading me is the whole thing. I mean I cannot judge except from what you have told me, but what you are telling me is that there is a prosecution under a municipal bylaw, not a civil nuisance suit.

Mr. Villeneuve: Certainly, cow bells, to the layman, would be a nuisance. Are you telling us that this bill would not protect this particular farmer the way it is written?

Mr. Swaigen: It depends on the facts of each case. What I am saying is that for the transitory problems that you get in the spring and fall and for problems that simply inconvenience people, even if they go on all year long, the law of nuisance will not protect people anyway and to the extent that this bill is therefore intended to prevent those suits, it does not do anything.

I would be very doubtful if anybody could succeed in a nuisance suit just because he hears a lot of cow bells, but it depends on the facts of each situation.

Mr. Chairman: I think we should move along.

Mr. Villeneuve: Just one more short question: In your opinion, should this board have the power to proceed with an injunction and prohibit a farmer from going about his so-called reasonable or normal farm practice? Or should that be left to the courts?

Mr. Swaigen: What I feel would be very valuable to everyone would be some sort of board that can voluntarily mediate disputes without taking away people's rights, because there are not many sane, rational people who would spend tens of thousands of dollars to go to court if they had a board like the board of negotiations set up by the Ministry of the Environment or some other form of mediation available to them.

That would be my druthers if I had my druthers.

If you are not going to do that and if you are going to set up legislation which strips people of all their rights to go before an independent, impartial court, then I do not see that you have any choice but to set up a board that will have the power to protect their rights.

Mr. Villeneuve: You do not see this board as a board to negotiate problems? That is what I was originally seeing it as, but not being learned in the law, I do not know what we have now.

Mr. Swaigen: That is a problem. I suspect a lot of people have come before this committee and said they do not know what we have either. That is a real problem. We do not know what we have here. All we know is that rights are being taken away and a board is being set up instead—

Mr. Villeneuve: Symbolic rights?

Mr. Swaigen: No; real rights. I am sorry I have not put that clearly across to the committee. It may be because I started out the way I started out and said some things that made it difficult to hear the rest of what I said, but no, real rights.

Mrs. Grier: You may not want to respond, but it seems to me that if it is a symbolic bill and a symbolic board and it is not really going to protect the farmers and it is not really going to protect the ex-urbanites, maybe the only person it is protecting is the minister.

Mr. Swaigen: I am not going to touch that one, Mrs. Grier.

Mr. Dietsch: Was that a symbolic gesture?

Mr. Black: Was that a symbolic tongue in someone's cheek?

Mrs. Grier: One of the Ontario Federation of Agriculture's suggested amendments was that the act should be amended to clarify what constitutes a violation. I am wondering if you, from your knowledge of the bill, could suggest, given the wording that is in the bill, what does constitute a violation under this bill.

Mr. Swaigen: Of this bill?

Mrs. Grier: Yes. If you had to define a violation of this bill, what kind of wording would you use?

Ms. MacDonald: It is hard to speculate what the OFA is trying to suggest. The only thing I can think of, since the act turns on the question of whether an act violates named acts, is that it wants that clarified. Is that what it is asking? We are guessing what it is asking.

Mrs. Grier: I guess what I am trying to understand is how I become in violation of this bill. What do I have to do to constitute a violation of this bill and who decides that? Does this board decide that?

Mr. Swaigen: The violation would be a violation of the normal farming practice, I would think. The bill is trying to protect normal farming practices.

Mrs. Grier: And then the board defines what the normal farming practice is.

Mr. Swaigen: The bill defines it and the bill defines it as being whatever people do, whether it is reasonable or not. The board then will work within those parameters. Being composed entirely of farmers, possibly, if that amendment goes through, and being a board whose avowed purpose by its name is

to protect farming practices, I assume it will construe normal farming practices pretty broadly.

1730

Mrs. Grier: But look at the example Mr. Johnson posed of the apartments near a field. Under present circumstances, if those people are complaining about odour, what recourse do they have? A suit for nuisance against the farmer? You said that would not likely succeed.

Mr. Swaigen: No. Where this board could be useful is if it did give those neighbours a forum they would not have otherwise, which could happen. That is one thing the board could do: provide a forum the neighbours would not have otherwise. But when the board's powers are limited in the way they are in the bill to only giving redress where the practice is abnormal, then the Legislature gives with one hand and takes away with the other.

Mrs. Grier: If I were the neighbour living by that field, I would have no more likelihood of stopping that manuring under this bill than I would have now.

Mr. Swaigen: No.

Mrs. Grier: If I am a farmer, I am no more likely to be inhibited from doing my manure spreading than I would be without the bill.

Mr. Swaigen: That is why I talk about it being largely symbolic, because in fact it will do nothing for anybody under many circumstances. I am sorry to come here and say this, because it is your bill and I am sure you do not want someone saying it is a meaningless bill.

Mr. Wildman: It is Mr. Riddell's bill.

Mr. Black: It is exactly what they do want to hear you come and say. They have been praying for a saviour.

Mr. Villeneuve: Jack is the saviour, we know that.

Mr. McGuigan: I have an overriding concern. It goes back into land tenure, the fact that not too many centuries ago a king or queen owned all the land and parcelled it out to the lords. Eventually, they parcelled it out to tenants and finally to people who have it in fee simple. As I understand it, that brings a bundle of rights with it and one of those bundles is to enjoy your property. If, as you say, this bill takes away from the neighbours the right to enjoy their property, in what jeopardy does that place the farmer to enjoy his property?

Mr. Swaigen: I am not suggesting the bill takes away the right of people to enjoy their property. There are different levels. There is enjoyment of your property and then there is the actual destruction of your property. The enjoyment of one's property is always, under the law of nuisance, limited by the nature of the area you live in. It is not unlimited.

If you live in a farming area, your enjoyment of your property has to be circumscribed by reasonable farming practices. If the bill goes even further, though, and allows the physical destruction of your property or your health and takes away your right to sue for it, that is where the concern comes in.

In my submission, that is what this bill does, the way it is written. I do not think it does that intentionally. I do not think that is what anybody intended, but I think that is what it says.

Mr. McGuigan: I follow your reasoning there, but I just wondered if farmers are not asking us to do something that in the end will come back to haunt them. You have pretty well assured me that is not the case. In your opinion, that is not the case?

Mr. Swaigen: I am sorry; I do not know what you mean by that.

Mr. McGuigan: Could somebody be arguing before the Supreme Court that farmers do not have to regard other people's bundle of rights, therefore I can go hunting on his property, therefore I can go snowmobiling on his property, I can ride my horse on his property?

Mr. Swaigen: Are you talking about people riding and snowmobiling on the farmer's property?

Mr. McGuigan: Yes.

Mr. Swaigen: I do not see how this bill would create any right to trespass on the farmer's property.

Mr. McGuigan: I just wanted assurance on that.

Mr. Chairman: Ms. MacDonald, Mr. Swaigen, thank you very much for coming before the committee. We appreciate your views.

Members will know that on Wednesday and Thursday this week we will be doing clause-by-clause of this bill. Both opposition critics have tabled their amendments with us, which we appreciate very much. The ministry has not yet, but will tomorrow.

Clerk of the Committee: Tomorrow. I will distribute a collated package, as soon as I get everybody's, to all the members.

Mr. Chairman: All right. It looks like we are not going to get to clause by clause today, I would suggest.

Mr. Wildman: I do not think we have time.

Mr. Chairman: Okay. On Wednesday, we will start with clause-by-clause.

ORGANIZATION

Mr. Chairman: In the time remaining this afternoon, we have had distributed a proposed schedule for Bill 162, the Workers' Compensation Board Amendment Act. This is for discussion for the committee. Under our proposal we would start meeting the week of February 13, we think.

Interjections.

Mr. Chairman: I am having trouble hearing; there are a lot of conversations going on. Would you mind closing that door? Thank you. It is not to keep you out, Mr. McLean.

Mr. Black: Let's keep him out, Mr. Chairman.

Mr. Chairman: We know that not everyone can be happy with the schedule. I think we all have to accept that fact. We know that there are different school break weeks, we know there are complications, but I really do not see any way other than to make some rather arbitrary decisions at this point, so that we can do some planning. It takes a long time to arrange scheduling, to get notices sent out, to get the proper wording to the Workers' Compensation Board. All that kind of preparation must be done considerably in advance, so we simply have to make those decisions.

Our recommendation, because we do not know exactly when the House is going to adjourn, is that the first week be reasonably flexible and that people coming before the committee be the groups that are themselves somewhat flexible; for example, the Ministry of Labour with the briefing it wants to give the committee on the bill and the office of the worker adviser and the office of the employer adviser on the bill itself.

Mr. Wildman: That would be here in Toronto?

Mr. Chairman: That would be here in Toronto. That would do a couple of things. It would get us into the bill and, in case the House runs into a hitch and is sitting, it would not be the end of the world. We could either cancel those hearings or carry them on while the House is in session. It gives us the maximum flexibility that way.

We have scheduled the school break week for March 13, knowing that not every school board is going to have the same school break week, but you can do only what you can on that matter.

Mr. Black: Not this year. It is two different weeks for the school break.

Mr. Chairman: Yes, exactly. We knew we could not win on that one, quite frankly.

The employers' organizations wanted to get in early and the injured workers' organizations and labour wanted to get in near the end. There is a note here about the Ontario Room being available the last two weeks in March as well, which ties in with our schedule coincidentally. The other thing is that we are going to try to get one day, if the response coming back from the groups is that there is going to be a large turnout, and we have reason to believe that they are really organizing to have one grand event, one grand day--which is fine; I do not think anybody has any problem with that--in which case we would try to get Convocation Hall.

Mr. Black: Are we going to do that in Dryden?

Mr. Villeneuve: Thunder Bay.

Mr. Chairman: If they want to go there.

Mr. Tatham: What is the purpose of that?

Mr. Chairman: It allows all the injured workers' groups to get their members together to come and be there when the presentation is made to the committee. That is all. It is a long tradition of their having one day where--some people call it a media event; I do not say that in a mean way--it allows them to get their people together.

Mr. Black: With all due respect, are we here to run media events or are we here to conduct committee hearings?

Mr. Chairman: We are here to conduct committee hearings, but in the past we have actually encouraged a day where as many of the interest groups can get out in one day to see what is going to and to have their leaders—they do not all make presentations. They go there to support their leaders in the presentations.

1740

Mr. Wildman: I think this developed originally because whenever the committee tended to have hearings related to the Workers' Compensation Board, a myriad of groups and individuals wanted to come before the committee. What was suggested was that if we could have them combine and have their groups work as an umbrella and they could be present to hear them, we could end up with one, two or three presentations rather than 20 or so.

Mr. Chairman: I might add that if you do not make a large room available, the workers will turn out anyway and then you have a problem.

Mr. Wildman: And then they overflow and you run into problems.

Mr. Chairman: Then you have a problem. We have tried to accommodate them. We have had the big Ontario Room, which holds about 300, but if what they are talking about materializes, that will not be big enough. It was not big enough last year, as Mrs. Marland, you may recall, pointed out.

Mrs. Marland: That is right.

Mr. Chairman: On the actual locations, on the list of recommended locations, I would ask you to add two to that list, and the committee must make this decision: (1) Timmins and (2) Oshawa.

Mr. Wildman: I agree with adding Timmins and Oshawa. I think we could drop Dryden if we are going to Fort Frances, but we have to go to one or the other. I do not think we have to go to both. Fort Frances is probably better since it is farther west slightly. I am wondering why we do not have St. Catharines on this list.

Mr. Chairman: Perhaps Lynn Mellor, our clerk, could speak to that.

Clerk of the Committee: I had heard from two or three people in the Kitchener-Waterloo area and they indicated that they were representing not only themselves but Guelph and Welland. They indicated that one of the locations would be sufficient.

Mr. Chairman: On the other matter, on the north: the injured workers' contact in Thunder Bay had suggested Dryden, not Fort Frances, but Mr. Hampton has assured us that there is major interest in Fort Frances and they would really like to go there. We do try to cater to members, but I know you cannot always do that.

Mrs. Marland: I agree with Timmins. I was going to ask for Timmins to be added as well.

We do not have anything east of Oshawa. We had talked about Kingston—

Mr. Chairman: Ottawa.

Mrs. Marland: East—

Mr. Wildman: Nobody wants to go east of Ottawa.

Mrs. Marland: No, no. East of Oshawa. We have just added Oshawa. We talked about Brockville and Kingston. Certainly I recognize we cannot go everywhere, but I am just wondering, if Oshawa is an hour east of Toronto—or less?

Interjection: Less than that.

Mrs. Marland: You have to wonder whether we would do more good, if we are going east of Toronto, by going further than Oshawa, like Kingston, and bring the people from east of Kingston back to Kingston.

Mr. Chairman: Two short comments. One is that Oshawa always gets told this. Second—

Mrs. Marland: So does Mississauga, by the way.

Mr. Chairman: Second, if you go to Oshawa, you are probably cutting down on some of the presentations that would be made in Toronto anyway. It is not as though you are really adding a lot to it. It is like going to Hamilton. The people there start to feel a little bit left out. It is up to the committee. By the way, there was very little response from the Kingston-Brockville area.

Clerk of the Committee: There was no response.

Mr. Chairman: No response.

Mr. McGuigan: A question there, Margaret. Is there much manufacturing, which you usually associate with injury, in the Brockville-Kingston area?

Mr. Villeneuve: Cornwall has it.

Mrs. Marland: My colleague is saying Cornwall has.

Interjection.

Mrs. Marland: Be that as it may, I am just making my comments. I looked and thought that we did not need both Fort Frances and Dryden, but those are my comments.

Mr. Tatham: What kind of numbers have we got for these various spots?

Mr. Chairman: That is a very good question. Lynn could perhaps give you a better answer, but at this time it is impossible, I think, to know what numbers of people are going to be turning out. All we can do is get an indication from them that there is a lot of interest in those communities.

Mr. Tatham: Is that two or 10 or 50 or 100? What are we talking about?

Mr. Chairman: We are talking about numbers of presentations more

than the number of people, right? I mean, if there were half a dozen presentations to be made in the community, that is a lot of interest because they represent a lot of the people.

Mr. Tatham: Put it this way. How many injured workers are there—click, click—in different spots? Do we not know that? Have we no statistics on that?

Mr. Chairman: No.

Mrs. Marland: Some injured workers can only afford to live in small places.

Mr. McGuigan: But you have to remember too, that the one is not more important than the 99.

Mr. Tatham: If you want to look after people, but what are we going to look after—

Mr. Chairman: It is hard to know.

Mr. Tatham, you are putting your finger on a problem when you are trying to do something like this, because you really are guessing a lot when you are planning that far ahead. But I do not know how to avoid that.

Mr. Tatham: Could we not, Mr. Chairman, find out? Are there no statistics on where they are located?

Mr. Chairman: Nobody knows.

Mr. Tatham: Nobody knows?

Mr. Chairman: It would not tell you anything anyway. We tried to get statistics like that from the board one time and the board said, "Well, we have regional offices and they know how many claims they've got." But that is where it ends. They cover large areas. It does not tell you anything about a little community.

Mr. McGuigan: Mr. Chairman, I would hate to see us lay those figures out in front of ourselves and then choose on the basis of where the large numbers are. That is deadly. You cannot do that.

Mr. Dietsch: I think what we have done in the past is that we have discussed—I support Margaret's thought in terms of the Kingston area. It appears to me, when I look at these numbers here, you are looking at, for example, Hamilton-Kitchener, you are talking about Oshawa, you are talking about Toronto, you are talking about centring everything in one area. Personally, I do not agree with that. You did not get any response back. I guess my question would be, "Well, what kind of response did you get from the other areas and from whom?" One response from one area does not seem to me to be a warrant for moving a hearing into that particular area and leaving out almost the whole of eastern Ontario. I just cannot buy that story.

Mr. Chairman: I am inclined to agree with you in principle, because I lean towards more hearings rather than fewer to avoid all sorts of accusations of neglect of the regions and all that kind of thing. So I am not trying to stonewall that way at all. It is the case that there are a limited number of days in our schedule.

Mr. Dietsch: Right.

Mr. Chairman: We have to get the biggest hit we can.

Mr. Dietsch: And I guess I am having difficulty in my mind sorting out why we should have a hearing in Toronto, why we should have a hearing in Hamilton and then Oshawa when you are pulling in the centre and you are leaving Kingston or Brockville or whatever that area—I would think Kingston is where the hearing, where the area office is, seems to me could be more—where is it?

Clerk of the Committee: There are seven regional offices. When I spoke to the different groups, I indicated the seven regional offices because I got the impression that the committee as a whole seemed to feel that the seven regional offices seem to be a commitment on that. I asked them if they would recommend any particular area where they know there is a reason for the committee to go.

Mr. Chairman: Who is "they"?

Clerk of the Committee: I spoke to the Ontario Federation of Labour. I spoke to the Injured Workers' Consultants. I spoke to two of the representatives of the employers' organizations. I asked them all exactly the same question. I said: "Look, the committee cannot go to every community. Can you give me some indication?" They did not give me an indication. They themselves would not make a commitment, but I did get my phone ringing from Kitchener-Waterloo. I have had my phone ringing from Hamilton, even though it is a regional area.

Mr. Dietsch: I am not finding fault with going to Hamilton, and I am not finding fault with going to Toronto.

Clerk of the Committee: In Oshawa, there has been a push on for that and—

Mr. Dietsch: I am finding fault sorting between the two and leaving the whole of eastern Ontario out. I do not agree with—

Clerk of the Committee: There has not been any response at all from that area.

Mr. Chairman: If you like, we do not know where to go next. When we do not get any response at all, it is hard then to say, well, to heck with it. It is not fair to leave out Kingston and schedule a meeting there anyway. That is a pretty tough decision to make, to take the committee there and do all the advertising ahead of time, notices, arrangements for the room, the travel, all that.

Mr. Tatham: It really would be cheaper to bring people down here, would it not, than to take all this committee down to Kingston. If there are folks that need help, who want to make a presentation, bus them down here, fly them down.

1750

Mr. Chairman: But people do like us to go there. I do not think you are disagreeing with that, either.

Mr. Tatham: I want to help people, but I sure do not want to waste money, either.

Mr. Black: I have some problems. We requested the hearing held in Toronto be held first. Is the Ontario Room the only room in which we can hold hearings?

Mr. Chairman: I would not think so, but I do not know.

Mr. Black: I am wondering why the schedule, for example, could not begin in January. During the time the House is sitting, we could hold hearings here in Toronto, have our briefing session, hold the Toronto hearings and then go on the road for two or three weeks. That would be my first suggestion.

Second, as I look at your schedule here, if we are only going to sit three days a week, unless the distances have shortened considerably in northern Ontario, we are talking about four days a week, we are probably talking about a week and a half to two weeks in northern Ontario, which means we are going to do Windsor, London, Kitchener-Waterloo, Hamilton, Ottawa and so on in another half a week or week and a half?

Mr. Chairman: I am confused. Every place requires a day; in Toronto it would require more than one.

Mr. Black: Right. The point I am making is this: We are rapidly getting beyond the five weeks of hearings that we were talking about.

Mr. Chairman: I do not think so.

Clerk of the Committee: I was looking at Hamilton as part of the Toronto area.

Mr. Black: Okay. The second question I would ask concerns the idea of a media day, a big event, a circus; that holds no problems for me. We can do that, but then we are going to sit for the next two weeks in Toronto and hear the same people come back and deliver the same messages to us one at a time? I think everybody in this room knows the answer to that question. We can all shake our heads "no," but we all know, "Yes, the message will be the same." It will be many of the same people returning to deliver the same message to us again and again. So, being quite realistic—

Mr. Wildman: Mr. Chairman—

Mr. Black: If I may finish, Mr. Wildman, before you get too upset. We will go to Windsor and get the message delivered there and then the same people will come from Windsor to the big media day and deliver the same message again. Then we will have hearings in Toronto and some of the same people will come to the hearings in Toronto so they can deliver the message again.

Mr. Chairman: So?

Mr. Black: Well, I am wondering if that is the best use of the taxpayers' money and I wonder if we are not really staging a media event rather than realistically holding public hearings to try to get the true temperature of the people out there. I think once again, I would suggest we know the answer.

Mr. Chairman: How do you avoid that? If you are going to hold public hearings on an issue or on a bill, how in the world do you avoid repetition? I mean, there are different people saying it. How do you say that this person can say it, but this person cannot? It is an extremely difficult decision you are asking the committee to make. For one thing, you would be prejudging.

Mr. Black: We are no more prejudging than we are doing by planning this schedule this way. We are prejudging there what we are going to hear as well, in a sense, are we not?

Mr. Chairman: No, we are prejudging where we are going to go.

Mr. Black: I have no problems with travelling around the province and providing hearings to various sections of the province. I have problems with two things. I have problems with the fact that a request from our caucus to have the Toronto sittings first, and to begin during the month of January when the House is in session so we can get the briefing sessions out of the way, then to go on the road and do our two or three weeks of hearings during the month of February, seems to have been lost somewhere in the shuffle. I would like you to reconsider that, because I think it is the feeling of our caucus that that was the approach we would like to have seen.

I really am concerned about the number of locations we are identifying. When I looked at the initial list I had concerns, then we added two more; now we are talking about adding another one or two more. This is going to be a very busy committee doing a hell of a lot of travelling and not sitting down to listen very much, unless we are able to shorten this list somehow.

Mr. Chairman: Okay, maybe I should respond to the comment about the timing. I hope that Mrs. Marland will correct me if I am speaking too much on her caucus's position.

There are two opposition parties that are relatively small and have great difficulty coping with public hearings of any substance at all when the House is in session. It is very difficult. You may recall that a big battle was waged over Bill 162 and public hearings while the House is in session and so forth. I thought that battle was over and that the government had agreed that the hearings would be when the House was not in session. That is how I feel about that.

The second thing is on the timing of it. The injured workers and the labour movement, both groups for whom this bill has the most impact, wanted very much the ending of the hearings, not the beginning, for their own reasons. I do not even know why, frankly; I did not ask them.

The availability of the Ontario Room was a coincidence. I did not even know that until Lynn told me it is available in the end, which suits the purposes of the injured workers coming at the end of the process too. Anyway, let's debate that more if you like.

Mr. Wildman: I would just like to reiterate and Jim, who served some time in opposition, will know the difficulty of an opposition party's manning all the committees when the House is sitting. I had one week a couple of weeks ago when the agriculture bill, which we are now dealing with in this committee, was being debated in the House. I had to speak on it as a representative of our caucus, while there were other matters being dealt with in this committee that were of interest to my caucus and to me as well. So that is a problem and it is problem we have to live with.

But it is a difficult thing for us to do what we think we should be doing and what our role is here, if we are holding public hearings when the House is sitting; but I will not go on at length about that.

Just in terms of the travel, I do not think it is a media event. For instance, I will use the example of the north. If we go to Sudbury we are going to hear a lot of problems from people who are involved in the mining industry, obviously. Go to Thunder Bay, though, and we are going to be hearing from a lot of people, most of them involved in forestry, pulp and paper mills and some in the grain elevators. If we go to Fort Frances, again it will be pulp and paper and forestry, but you will be talking about it in a small community as opposed to a larger one which is more distant from the regional office.

I say all of this, pointing out that I am not making any plea for my area. In terms of a media event, it is not going to benefit me as a member of the committee, but I think it would be useful for the committee to hear those different perspectives.

Nobody disagrees that we should go to Ottawa, because here you are talking about a very different kind of workplace and a community that is quite different from the others.

Again, in Windsor, you are going to have the auto industry; in Hamilton, the steel industry; in London, Kitchener-Waterloo, different smaller-type plants, auto parts and those kinds of things.

I think you could pick just about any area. We could say we will go to Pembroke, to some place in the area around Barrie or something. You could have good reasons for going there. I think all of us recognize that we have to limit it,l but we also, I think, have to locate them in such places (1) where we will get different perspectives and (2) where the people who are not living in these communities but are in other communities will have the opportunity of coming to a community which is not too distant from their own home. That is a major problem in the north but it is certainly a problem--as I recognize has been suggested--in eastern Ontario as well.

It is up to the committee. I am prepared to sit, if we have to, in January, if that is what the committee wants to do but it makes it difficult for us. If I can say this--is Hansard here? Well, I will say this anyway.

If we do not give the injured workers the opportunity in Toronto to come and listen to what we have to say and what is said to us--if we try to have it in a small room, we could end up with a bloody war outside the door. We all know that. We saw what happened in the Legislature. We do not want that. We are an open committee. We want people to have the opportunity of seeing what we are doing. They will come in large numbers.

1800

In Toronto--I meant to mention this as well--the kind of injured workers' groups you are going to have are going to be different from what they are in Sudbury. Where it is the mining industry in Sudbury, in Toronto they are largely going to be the construction industry. I think we have to avoid that kind of confrontation. We do not want to have a confrontation with the people who are wanting to know what we are doing; we want to hear what they have to say.

Mr. Chairman: Okay. I do not want to cut off debate. We have a couple of other decisions to make, though. We will go back to this, if you like. I propose to sent out a letter drafted by Lynn to the interest groups. The list has been given to us by the Ministry of Labour?

Clerk of the Committee: Yes, there are two quite extensive lists that the ministry has given me. One is the contact list for all the employers' groups that the ministry has had contact with on this bill and the other is the contact list for all the employees' groups. There are 28 pages on each list.

Mr. Chairman: That would be where that first letter would go. The second would be the advertisement at the bottom, in the local dailies and the ethnic press. If there are any problems with that, let us know.

Clerk of the Committee: In whatever communities that the committee decides to go to.

Mr. Chairman: I just wanted to make sure that was brought to your attention before we adjourned today.

Clerk of the Committee: I was speaking to the Workers' Compensation Board and, on its initial looking at things, it was in agreement to send notice through the cheques. Then I asked for deadlines and numbers and, when they got back to me, they indicated that the majority of their cheques, the pensioners' cheques, are now direct deposit, so we lose about 80,000 notifications there.

Mr. Wildman: A lot of bank managers might show up.

Clerk of the Committee: They have only the people who are on a short-term disability pension of some description on direct mail. That vehicle is not a good vehicle for the committee to use, I do not think.

They also had an employers' contact list, but they cannot guarantee when that would go out. We are looking at the end of January when that would go out.

Mr. Chairman: I can tell you that one of the most common complaints we get as a committee is lack of time for groups to appear. We often get that. Often it is not our fault, but nevertheless it happens. I hope we can make some decisions here. I do not want you to feel railroaded, but this is the last week.

Clerk of the Committee: The notice is one of my biggest concerns. I can see with these lists—here they are; this will give you an idea of how big the lists are. Those are the two mailing lists from the ministry. My concern is getting the letters out to them as quickly as possible. I can see that these letters would go out the first week in January. You are going to lose that week between Christmas and New Year's and the week after you are going to lose a lot of people as well, actually reading or doing anything about it. I can see the letters going out the first week in January.

Mrs. Marland: Excuse my interrupting. Why would the letters not go out before the first week in January?

Clerk of the Committee: If you send them out into offices now, they are going to get at the bottom of the pile and they are not going to get noticed. That is a big concern on my part.

Mrs. Marland: Yes.

Mr. Wildman: Because of the Christmas season.

Clerk of the Committee: Yes, because of the Christmas season. They are going to be overlooked and then you are going to have people coming back and saying: "You didn't notify us. You didn't give us enough notice."

Mr. Chairman: The earliest would be next week anyway at this point.

Mrs. Marland: Right.

Clerk of the Committee: It would take me a week to produce them and get them out. It would be late next week, so it means the delivery is into the week between Christmas and New Year's.

Mr. Black: I am going to suggest that we form a three-person planning committee to review this, get the feelings of our caucuses and try to get agreement.

Mr. Chairman: A steering committee? I would endorse that 100 per cent, that we have a steering committee of, presumably, Miss Martel, Mrs. Marland, if you are agreeable to that—

Mr. McGuigan: Mr. Black as well.

Mr. Chairman: —and Mr. Black. All right. Perhaps that is a way we could make some rather crisp decisions.

Mr. Dietsch: I would like to point out that out of these visit spots, we talked about Kingston, we have nothing in here with respect to the farming community and any accidents or workers' compensation that is affiliated with that industry as well. I just think the committee should bear in mind that segment.

Mr. Wildman: We can send a letter to the Ontario Federation of Agriculture.

Clerk of the Committee: That is on this list.

Mr. Tatham: Do we ever have night hearings?

Mr. Chairman: Yes, we often have had night hearings, which are acceptable if you have not also met in the morning and the afternoon, I want to tell you.

Mr. Tatham: I was just thinking, when we are sitting, if we could have a night hearing a few times, once or twice a week.

Mr. Chairman: Can we set a time for this steering committee to meet? How about tomorrow? We really should sit down fairly quickly.

Are you around tomorrow afternoon at four o'clock? I have something in the House tomorrow. There is the supply motion I have to deal with.

Mrs. Marland: Are you discussing when to meet?

Mr. Chairman: When to meet. We want to sit down tomorrow.

Mrs. Marland: You do not want to do it now. It would only take us 10 minutes.

Mr. Chairman: I am agreeable to that.

Mrs. Marland: Okay, let's do it now.

The committee adjourned at 6:07 p.m.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

FARM PRACTICES PROTECTION ACT

WEDNESDAY, DECEMBER 14, 1988

STANDING COMMITTEE ON RESOURCES DEVELOPMENT
CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)
VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)
Black, Kenneth H. (Muskoka-Georgian Bay L)
Brown, Michael A. (Algoma-Manitoulin L)
Dietsch, Michael M. (St. Catharines-Brock L)
Grier, Ruth A. (Etobicoke-Lakeshore NDP)
Marland, Margaret (Mississauga South PC)
McGuigan, James F. (Essex-Kent L)
Stoner, Norah (Durham West L)
Tatham, Charlie (Oxford L)
Wiseman, Douglas J. (Lanark-Renfrew PC)

Also taking part:
Martel, Shelley (Sudbury East NDP)
Pope, Alan W. (Cochrane South PC)
Villeneuve, Noble (Stormont, Dundas and Glengarry PC)

Clerk: Mellor, Lynn

Staff:
Williams, Frank N., Legislative Counsel

Witnesses:

From the Ministry of Labour:
Clarke, Richard, Manager, Policy Branch, Labour Policy and Programs

From the Ministry of Agriculture:
Riddell, Hon. Jack, Minister of Agriculture and Food (Huron L)
Dombek, Carl F., Director, Legal Services
Dunn, Donald R., Director, Foodland Preservation Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, December 14, 1988

The committee met at 3:40 p.m. in committee room 1.

ORGANIZATION

Mr. Chairman: Would some member be prepared to move a motion on the weeks we are going to be sitting? Mr. Pope.

Mr. Pope: I move that our schedule be as in the motion before us.

Mr. Chairman: The weeks that are in the memo.

All right? Is there any debate? All those in favour? Opposed?

Motion agreed to.

Mr. Chairman: On the locations—the 12 locations only, that is not adding Kingston. Let's make that clear: Kingston is not on the list if we move that.

Mr. Pope moves the motion.

Motion agreed to.

Mr. Chairman: On the room requirements, is there any problem with us getting Convocation Hall for one day to allow the injured workers to get their people out for one day's presentation?

Mr. Black: The arguments are very persuasive, I am prepared to support it.

Mr. Chairman: Thank you, Mr. Black.

Mr. Pope moves the motion. All in favour?

Motion agreed to.

Mr. Chairman: All right. Do we need anything else on the rooms?

Clerk of the Committee: Perhaps we should be looking at flexibility, that is going with a regular committee room and letting me endeavour to get a reading on the numbers that are going to be there so that for those days in Toronto if we do not need the Ontario Room we will meet in a committee room.

Mr. Chairman: Okay.

Mr. Tatham: I will be away the last two weeks of March. I imagine other people will be away different times.

Mr. Chairman: Anything else on the scheduling? I thank the members for their co-operation.

As soon as we get a calendar that can be put together with places we will get it around to members. There is attached to your package a letter from the Workers' Compensation Board which says it is virtually impossible for them to send out the notice with their mailings. Any discussion on that?

Miss Martel: I was reading through the letter from the board. As I read through it I really think we are getting snowed. I would like to raise some concerns I have with it.

First, although some of the cheques have moved to direct deposit, I find it difficult to believe the board does not have anywhere in its list the addresses of those injured workers. Every year when there is an increase in terms of the rate of inflation added to the cheques, whether it be temporary benefits or pension cheques, each worker gets notification of that.

Mr. Chairman: To be fair, that is not what they are saying. They are saying there is not a regular mailing made in which they could include a notice of the committee's intentions.

Miss Martel: Did we not direct that mailing to occur though?

Mr. Chairman: No, what we had asked, as I recall—I stand to be corrected—was that our notice be included with the Workers' Compensation Board end-of-January mailing. That was my understanding, with the cheques. But 80 per cent of those cheques are direct deposit so there is no end-of-month mailing.

Miss Martel: Usually in the new year, though, everyone is also notified about the increase as per the rate of inflation. I am wondering if it can be checked with the board to see when those notices go out.

Mr. Wildman: That is a very good point.

Mr. Chairman: That is a good suggestion. Perhaps we could make that suggestion, that if there is a mailing going out this notice be put in with it.

Mr. McGuigan: Reading their letter, though, they do bring up some pretty valid points as to the confusion which may be caused by including notices along with regular mailings.

Mr. Chairman: I was involved in that. I do not recall the confusion matter being raised. I am not saying there was none, but it sure was not an issue with the committee. Perhaps we would have to word this very carefully.

We must make a crisp decision here. Do we want to pursue with the board whether it is possible to send a notice out or do we not? What are the wishes of the committee?

Mr. Tatham: If it possible, sure.

Mr. Chairman: Okay; put that in the form of a motion, please. Mr. Pope moves that that occur. If it is not possible, we will not do it.

Motion agree to.

Mr. Chairman: If it is not possible, then we will not do it. They are saying there is no regular mailing at the end of the month, I think that is what they are saying; but you may be quite right.

Miss Martel: This is the notice that is going out to them then?

Clerk of the Committee: No.

Miss Martel: The notice in the package?

Clerk of the Committee: You do not have the notice in your package because of the information I have that is contained in the letter. I have not prepared the notice. That was one of the items I was to do today. That is the ad.

It would have to be very brief: one piece of paper, four languages. It has to be virtually a notice. It could not be any more than: "The resources development committee will be meeting on Bill 162. For dates of hearings in your area please check your local papers."

Mr. Chairman: May I make a suggestion on that? There is a problem in the north, particularly in Frank Miclash's area, that there are no daily papers in a lot of those communities. If there is a way to get the ad in the weeklies in that part of the province it would be very helpful.

Mr. McGuigan: On the matter of the notice, if they do acquiesce and send a notice along with their other mailing we should go to some extent to explain to the injured workers that our notice does not pertain to anything else in the envelope.

Mr. Chairman: I have some sympathy with that point. The committee does not want the workers to think it is part of the WCB process either; it is not without legitimacy.

Mr. McGuigan: I have some serious concerns about proceeding in that manner.

Mr. Chairman: It will probably not happen.

Mr. McGuigan: I hope not.

Miss Martel: I want to go back to the question of notification through the office of the worker adviser and the office of the employer adviser. I know we have the two lists which were sent to us concerning which organizations could be contacted. When the office of the worker adviser's legal counsel was contacted about this, the question asked was specifically which organizations should be represented.

The list I was referring to—and I am sorry there was some confusion, I go back to what I said in my comments last Monday in Hansard—was the list of injured workers. The concern I raised at that time was that through the board we would get notification to those people who were already on benefits but we would not be able to tap into those people whose benefits were under appeal or who had had an adverse decision on which they were waiting for a further answer.

The problem I see is that this particular list is of trade unions and injured workers' groups. It is not what I had been referring to: the list from the worker adviser, which is what I wanted to have used.

Clerk of the Committee: This is the list I was provided with. If you have some suggestions or something you want me to get—

Miss Martel: Actually, I do have a suggestion, if I can make it here so the other members of the committee can hear it. I did talk to the office of the worker adviser. Again, they suggested a letter could be sent to the gentleman who is in charge in terms of both the office of the worker adviser and the employer adviser, outlining that it is the client list we want used, not the list which was submitted concerning trade union movements. He would make the decision on behalf of both the office of the employer adviser and the worker adviser as to who would be notified.

Mr. Chairman: Who would make that kind of decision: an employee of the Ministry of Labour?

Miss Martel: He is at this point, I think, yes. He is the boss, technically, of both those groups. The office of the worker adviser thought he would probably be the one to whom we should make the suggestion. They did not think they had the authorization, on their own, to do a mailing.

Mr. Chairman: We do not know the numbers, right?

Miss Martel: No, I do not. Sorry.

Mr. Chairman: We cannot answer that question here today, but I think Lynn could contact him. Do you have the name of that person?

Miss Martel: Yes, I do.

Mr. Chairman: We shall see what is possible there.

Mr. McGuigan: We are asking for the list of injured workers? Is that what we are asking for?

Mr. Chairman: It would basically be injured workers and employers, because it is the office of the employer adviser as well. They would also be made aware of the committee's hearings.

1550

Mr. McGuigan: Employers, not the injured—

Mr. Chairman: Employers and injured workers; because the Office of the Employer Adviser deals with employers and the Office of the Worker Adviser deals with injured workers.

Clerk of the Committee: Are we talking thousands in numbers involved?

Mr. Chairman: But they would do the mailing, not us.

Miss Martel: It would go from their office. They would do the notification.

Clerk of the Committee: We are not talking about producing a letter here.

Miss Martel: No, they would do their own.

Mr. Chairman: We have a gentleman here who might even be the person you are talking about, I do not know. Perhaps you could identify yourself, sir.

Mr. Clarke: My name is Dick Clarke. I am with the Ministry of Labour. I attempted to communicate earlier through Mr. Gladstone, the gentleman Miss Martel is referring to, in connection with the request of the committee. My understanding was that you were asking of them the same sort of thing you were asking of the Workers' Compensation Board.

Mr. Chairman: Right.

Mr. Clarke: Neither office has a regular mailing to its client groups. In response to my inquiry, the Office of the Worker Adviser provided us with a list of three or four more organizations as to the employer adviser to add to the ministry list; and as well the Office of the Worker Adviser undertook that it would notify another list of organizations when apprised when the committee was meeting.

Whether or not it is appropriate in these days of the Freedom of Information and Protection of Privacy Act and that sort of thing to provide them with a list of your clientele, I am not in a position to answer this afternoon; but they do not have a regular mailing either, and that was the problem.

Mr. Chairman: Where does that leave you?

Miss Martel: My information from the Office of the Worker Adviser is that it does have a mailing list of its clientele. I do not know what else I can say.

Mr. Chairman: They have a mailing list, but Mr. Clarke was saying they do not have a regular mailing.

Mr. Black: I wonder if we could agree to leave this to the clerk to work out what seems feasible. She has a feeling for what the committee would like.

Mr. McGuigan: I have serious concerns about the confidentiality of any list.

Mr. Chairman: We would not be seeing the list or sending to the list; the list would not be coming to us.

Mr. McGuigan: I would want to be certain of that.

Miss Martel: I am not suggesting that we have our hands on the list. I do not want the list. We have no right to have it in the first place.

Mr. Chairman: Could we have a motion please?

Miss Martel: I do not know what to move now, because if you want the clerk to check that perhaps we have to wait until that is done.

Mr. Chairman: You could move that the clerk be authorized to contact the two offices to determine whether or not a mailing is possible.

Miss Martel: I so move.

Mr. Chairman: If it is not possible, it is not possible.

Motion agreed to.

Anything else on Bill 162? If not, thank you very much.

PROTECTION OF FARM PRACTICES ACT

Consideration of Bill 83, An Act respecting the Protection of Farm Practices.

Mr. Chairman: We have the minister with us, if he will come forward with whomever he wants to have join him.

I should point out a couple of things. First, there is a vote tonight at 5:45 p.m. Second, if we are going to spend two days on clause-by-clause and if, as I think, all three parties want this bill through, it must be reported back to the House tomorrow afternoon in time for third reading, so we do not have the full time tomorrow afternoon to spend on our consideration.

I just ask members to keep that in mind. I am not trying to restrict debate, but if you want this bill through tomorrow afternoon, I think it has to go back to the House in the neighbourhood of five o'clock so that it can be put through for final reading and royal ascent. That is just so we all know there is a time restriction tomorrow and that this afternoon there is a vote at 5:45.

Mr. Black: We should finish clause-by-clause this afternoon, ideally.

Mr. Chairman: That would allow us lots of time tomorrow to do third reading.

Welcome, minister.

Hon. Mr. Riddell: Nice to be here, Mr. Chairman.

Mr. Chairman: The members have a summary of the briefs, prepared by Lorraine Luski. We have legislative counsel with us today as well. Do you wish to make any opening comment, minister?

Hon. Mr. Riddell: I will be very brief. I must say that in the three and a half years I have been the minister, this is the first time I have appeared before a committee other than when we were considering my expenditure estimates, and yet we have passed a number of agricultural bills through the House. It is indicative, I guess, of the co-operation that I always receive from opposition members when it comes to trying to improve the agricultural industry.

We think that we probably have one of the best bills from the standpoint of protecting the rights of farmers in carrying out normal farming practices that you will find anywhere on the North American continent. There has been a lot of work go into drafting this bill. The consultations that have taken place, the hearings and the input that the opposition members have made have all led to what we believe to be a very good bill.

I do look forward to hearing the views and amendments of the members of this committee. I will certainly make some remarks on these amendments. If we get into some legal matters, I have with me the director of our legal branch, Carl Dombek. I also have the director of our foodland preservation branch, Donald Dunn, who can answer any detailed questions that you may want to get into. We also have at the back of the room Tonu Tosine and Neil Smith who are

also connected with the foodland preservation branch. With that, I guess we can proceed.

Mr. Chairman: Okay, thank you. Members have a copy of the bill, I am sure, and the package of amendments, arranged in proper sequence rather than by party. I suggest we do the first general one by Mr. Wildman, because it applies to the entire bill.

Mr. Wildman: Just in that regard, I am under your direction of course, but I think it might be more helpful if I were to move the amendment on the substitution and the definition; if that carries, the amendment that is listed first would then follow.

Mr. Chairman: If the first one carries—

Mr. Wildman: No, that is not what I am saying. I am saying the opposite of that.

Mr. Chairman: If it does not carry—

Mr. Wildman: No, I am suggesting we do not deal with it first. I am suggesting we deal with the amendment that deals with the substitution and the definition. If that carries, then this amendment follows.

Mr. Chairman: I am missing something.

Mr. Wildman: Because you are not looking at the right one.

Mr. Villeneuve: Yes, look at page 3.

Mr. Chairman: Page 3, okay. I see.

Mr. Wildman: If this one was to be carried, then the one that is on the first sheet would follow.

Mr. Chairman: I understand now.

Mr. Wildman: I will move this amendment, if that is in order.

Mr. Chairman: All right, yes. I think it is in order.

Section 1:

Mr. Wildman: I do not know whether there are any other amendments prior to this.

Mr. Chairman: This is the third page.

Mr. Wildman: Yes, and it is page 2 of the bill.

Mr. Chairman: But page 4 of the package of amendments. All right, go ahead Mr. Wildman.

Mr. Wildman: This is under section 1.

Mr. Chairman: Mr. Wildman moved that the definition of "normal farm practice" in section 1 of the bill be struck out and the following substituted therefore:

"'reasonable farm practice' means a practice that is conducted in a manner consistent with proper, efficient and effective farm methods, customs or standards and that employs modern and innovative technology and advanced management practices."

Mr. Wildman: I will not speak at length. I think all of us on the committee have heard all the arguments in the presentations that were made, and also during the second-reading debate.

It has been suggested by the Ontario Federation of Agriculture in its presentation to the committee that this might be more appropriate. The federation argues that "reasonable" is a better term to use, since "normal" might in fact be something that was normal, customary and accepted but not reasonable and not necessarily the best practice.

Also, I do not think it is enough just to substitute the word "normal" for "reasonable." We should have a further definition. I noted with interest that not only the Ontario Federation of Agriculture but the Canadian Bar Association, the environmental lawyers who appeared before us, agreed that this amendment would go a long way to meeting some of their concerns. I read this to them when they appeared before the committee on Monday, and they said that although they had some serious concerns about the bill this would be better. It seems that people who might be characterized as being on opposite sides of this particular issue agree with this amendment. For those reasons, I would hope the committee would accept the amendment.

1600

Mr. Villeneuve: I, too, agree with my colleague the member for Algoma (Mr. Wildman) that the Ontario Federation of Agriculture, and indeed many of the people who made presentations, wished to change the word "normal" to "reasonable" in spite of the fact that we were told that the word "reasonable" tended to be a weaker word. However, with the caveat that goes along with this, which explains to some degree and sets out what "reasonable" would be in the context of this bill, I would be able to support the amendment as put forth by my colleague.

Mr. McGuigan: I know there is disagreement on whether we should use the word "reasonable" or "normal," but I am persuaded by people who seem to know what they are talking about that "normal" is the better word. I do not think it is a tremendous hurdle whichever one we use, because what is really important is the definition. "Reasonable" might bring with it a charge by the persons who might consider themselves aggrieved that you are not being reasonable because you do not agree to do totally what they want to do. It is using "reasonable" in a different context, but nevertheless it is the same word. I am persuaded that "normal" is the better word.

I am trying to think of an example. I must confess that at the moment I cannot think of one. I have some concern about "innovative technology" used with "advanced management practices." Simply because something is innovative does not mean it is proper or it should be used. I am not trying to be critical of the member's amendment, but it does raise that sort of flag in my mind. Perhaps we could talk about it and see how we can overcome that problem.

Mr. Dietsch: I think there are more reasons for getting into the "normal" term as opposed to the "reasonable" term. I think what we are trying to do is draw a parallel, legislation that has some continuity with other pieces of legislation as they come on. I think what is being endeavoured here with respect to the term "normal"—and I will be presenting a government

amendment with respect to that term, depending on what happens with this particular amendment—is to try and get some continuity in how "normal" practices relate to other pieces of legislation.

For example, we talk about the dovetailing of this piece of legislation in with the Environmental Protection Act and the relationship of how it refers to "normal farming practices" within that act. I do not think we want to get into a type of confusion between pieces of legislation in trying to get those things to work together.

I recognize that there were a lot of good points brought up in the presentations that were put before us, and given that recognition, I think we are talking about making some additions to take away concerns that were expressed. For that very reason, I cannot find myself supporting the amendment that is before us; I think I have a better solution in terms of addressing it at a future time.

Mr. Wildman: On a point of order—

Mr. Chairman: A point of order.

Mr. Wildman: Is there another government amendment available? Mr. Dietsch referred to a government amendment he intends to put. I do not see any government amendment to that effect in this package.

Mr. Black: Immediately prior to that one.

Mr. Dietsch: Yes, it is in your package.

Mr. Chairman: Are you finished, Mr. Dietsch?

Mr. Dietsch: Yes, I am.

Mr. Chairman: Mr. Tatham.

Mr. Tatham: I feel that we should get down to specifics. If you were spreading manure in a field in the conventional manner and somebody who moved out from the city suggested that it was not a very nice thing to do, that you should do something else and there were innovative methods of putting it down into the ground as they do in other areas, that might be the "reasonable" thing to do for somebody, but the "normal" practice is what has gone on over the years. I would think you might put the person under the gun by suggesting that they had to be "reasonable", whereas the "normal" is a little different situation.

Mr. Chairman: Thank you.

Mr. Wiseman: I just wondered, if you move over to the third amendment you see that the government is proposing pretty well what I think Mr. Wildman is proposing by striking out "normal farm practice" in their definition—

Mr. Villeneuve: They are using "normal" with the same definition.

Mr. Wiseman: Yes, pretty near the same definition as my colleague's here, so if they are saying no to Mr. Wildman's then they are really saying no to their own.

Mr. Dietsch: With all due respect, there is a difference and the difference is that Mr. Wildman is proposing the term "reasonable". What I had indicated is that we would stay with the term "normal," but recognizing that Mr. Wildman has clarified the motion further to define those difficult areas that were brought forward by our presenter it is included in that other motion; so they are not the same.

Mr. Wiseman: To a layperson they are almost the same.

Mr. Chairman: The definitions almost look alike, and while we would not accept Mr. Wildman's we will be expected to accept the government version.

Mr. Wildman: I have two questions. First, could legislative counsel indicate if indeed there is a problem legally in terms of the term "normal" as opposed to "reasonable"?

Mr. Williams: That it an interesting one. I think that in either case probably you are going to have the court's having to make a determination of what is "normal" or what is "reasonable". There is a slight nuance. Each has a slightly different nuance, but in either instance you would have to look at the particular circumstances of the particular case you are talking about. The courts would make a decision.

I do not think the shades of difference are really all that much, but you have to make sure that you look at the words that make up the definition because they are slightly different as well. It is not just the "reasonable" and the "normal" that are different, the wording within the definition itself is slightly different.

Mr. Chairman: Perhaps some clarification from the legal branch would help.

Mr. Dombek: I guess it is the old saw that whenever you get two lawyers in a room you get three legal opinions. I am afraid that I have to disagree somewhat with my colleague. We have had the chance of discussing these terms with our colleagues down at the Ministry of the Attorney General, in the constitutional law branch and in the policy section. One of the very serious concerns we have is in relation to the constitutionality of the board. We do not want to find the Legislature passing a piece of legislation that would be in violation of Section 96 of the Constitution Acts which allows the federal government to appoint judges. Some members will recall the residential tenancy case of a few years ago that went to the Supreme Court of Canada, where the Residential Tenancy Commission was found to be ultra vires, the whole setup there.

One of the things in our study of the law of nuisance is that the courts do look at what is reasonable. To quote Lord Denning who retired as master of the rolls in a very famous British case, he talks about what the reasonable man on the Clapham omnibus would determine.

Mr. Wildman: That sounds interesting.

1610

Mr. Dombek: Well if you have ever ridden a Clapham omnibus I suppose you would find it interesting. We have to be very careful that the terminology we use is not going to be something which would be similar to what the courts would have in their inherent jurisdiction. Besides the points that were made

by some of the members, we were very careful in picking that term "normal," if that is of any assistance.

Hon. Mr. Riddell: I think perhaps the Ontario Federation of Agriculture is not holding all that fast now to using "reasonable" instead of "normal," particularly after it heard, I believe it was John Swaigen of the Canadian Bar Association refer to the differences between his reasons for preferring "reasonable" and the OFA's reasons for preferring "reasonable."

I will just give you a case in point. I do not need to mention his name, but you will know whom I am talking about. A former chairman of the OFA had the police march in on him one night and tell him that he had to turn off his corn dryers. The chap said, "Why?" "Because a neighbour living in the area says that she cannot sleep because of the hum of the corn dryer." If you were to put "reasonable" instead of "normal" in there, you are now opening up a debate as to whether it was reasonable for him to have his corn dryers going, because the argument could be made that he could have sent his corn to the elevator in town instead of storing his corn on the farm and drying it.

It is a normal practice, and the farmers all recognize it as being a normal practice, to put your corn in storage and to dry it, which means that the thing is going to be humming away 24 hours a day. That is a normal practice. But now you have opened up a debate as to whether it was "reasonable" for him to be operating that corn dryer, or should he have sent his corn to the elevator uptown.

That is just one. Another example, which I think Mr. Tatham used, was if a chap goes out to spread liquid manure. There are different ways of doing it. You spread it on top of the land or you chisel it in. It is a normal practice to do both, but somebody may come along and say, "Is it reasonable for this person to spread the manure on top of the land, or should that person not have chiseled it in?" If you are going to make that farmer chisel it in then you are going to make that farmer go out and buy a big-horsepower tractor that may not lead to more efficiency on his farm because he may not need a big-horsepower tractor. But we all know what power it takes to chisel anything into the ground.

I think you are weakening the bill tremendously to put "reasonable" in there. If anything "normal" strengthens the bill, because it is a term that is already used and is recognized to a certain degree by the farming community. I must also say that it is consistent with environmental laws we have in this province. These environmental laws refer to "normal" farming practices. Why would we bring in an unknown which only opens it up for debate and, I think, weakens the bill?

Mr. Wildman: I understand the arguments that are being made. I just want to point out that if we have confidence in the members who are going to be appointed to this board they should be, I would hope, reasonable people.

They will be the ones who will decide whether or not two practices which are normal are also both reasonable. If in fact they know something about farming, which I would hope they would, and if they are reasonable, then surely they would not order a farmer to purchase a machine that would drill liquid manure into the ground when it is quite reasonable for anybody to spread manure with a normal manure spreader.

I understand the arguments that are being made, but it seems to me that if you are taking that position then you are prejudging that the members who

are going to be appointed to the board are not going to be reasonable people.

Mr. Wiseman: I would just like to say that given the minister's examples and knowing that has happenned in my own riding, if "normal" is a stronger word I would go with it rather than "reasonable."

Hon. Mr. Riddell: If I may just comment again: It is all well and good to expect that the board is going to be reasonable, but if the complainant is not satisfied with the decision of the board, then the next step is in the courts; then you have a judge trying to determine what is reasonable. There is where I have a real fear, when it goes beyond the board. Sure, the board is going to administer with a lot of reason, because we are going to have qualified people on that board. But when they get to that next step--and some of them will, I think--if "normal" is in there the judge will pretty well be guided by that in whatever decision he makes, but if "reasonable" is in there he is going to have to open it up to debate as to what was reasonable.

Mr. Chairman: Any further debate on Mr. Wildman's motion? All those in favour of Mr. Wildman's motion, please indicate. Opposed?

Motion negatived.

Mr. Wildman: In that case, I withdraw the amendment on the first page.

Mr. Chairman: I assume Mr. Villeneuve does the same.

Mr. Villeneuve: I do likewise.

Mr. Chairman: That means we move to the third page and the government motion.

Mr. Dietsch moves that the definition of "normal farm practice" in section 1 of the bill be struck out and the following substituted therefor:

"normal farm practice" means a practice that is conducted in a manner consistent with proper and accepted customs and standards as established and followed by similar agricultural operations under similar circumstances and includes the use of innovative technology used with advanced management practices."

Mr. Dietsch: I think it is fair to say that this has had a considerable amount of debate under Mr. Wildman's motion. However, I would like to point out that the arguments made by the presenters to the committee as well as much of our previous discussion are covered by the inclusion of "and includes the use of innovative technology used with advanced management practices."

Mr. Wildman: I do not think we need to prolong the debate at all. We have made the arguments. I just want to point out that in this amendment, the ministry is inserting "accepted customs" which we heard arguments about before the committee. The question of whether something was accepted but necessarily proper was raised. I will just make that point.

Mr. McGuigan: I take a lot of comfort in the fact that the word "proper" is there, not only in relation to innovative technology but also in relation to whether a certain act should be carried out.

Mr. Wiseman: Could we just ask for some guidance from our legal people, so we do not get ourselves bogged down as the minister said with court decisions. Perhaps the board, or whoever deals with it could understand this clearly and not have it end up in a court case, but rather that the board as set up should be able to deal with it. By putting this in are we apt to have challenges in the courts?

Mr. Williams: I cannot answer with any great certainty. I do not see any great glaring problems with it. As to whether or not the court—

Mr. Wiseman: We do not want to—

Mr. Williams: It is great to know, but you never really know.

Mr. Dietsch: If we had control over the courts that would settle a lot of things, if we had reasonable people instead of lawyers.

Mr. Wildman: That is the system they have in the Soviet Union. I am not sure we want it here.

1620

Mr. Chairman: All right, let's get back to the bill. Is there any further comment on the motion by Mr. Dietsch? All in favour? Opposed?

Motion agreed to.

Section 1, as amended, agreed to.

Section 2:

Mr. Chairman: Are there any comments or questions on section 2 of the bill?

Mr. McGuigan: I have a comment. This particular section is something like the act that governs severances and so on, where you slot in the Planning Act, where you slot in various other concerns. I think a lot of the concerns that were brought to us about environment, whether you should do this act or whether you should do that act, fit into these various other acts.

Section 2 agreed to.

Section 3:

Mr. Chairman: We have an amendment on subsection 3(1). The clerk reminds me that when there are two identical amendments to the same section of the bill, they are put in the order in which they were received by the clerk.

Mr. Wildman moves that subsection 3(1) of the bill be amended by inserting after the word "five" in the second line the word "qualified" and by inserting at the end thereof "who are persons having experience and knowledge of farm practices and who are selected from the various regions of Ontario."

Mr. Wildman: I think the insertion of the word "qualified" is self-explanatory; the minister himself used that term in talking about the kind of people who would be appointed. Arguments were made by the Ontario Federation of Agriculture, the Christian Farmers Federation of Ontario and

others that they wanted to have people on the board who had experience and knowledge of farming and farm practices.

It was also suggested by a number of presenters that it would be useful to have people who were from different regions of the province for determinations as what is accepted and normal in one region or another of the province. Practices in northern Ontario or eastern Ontario, for example, might not be the same as what is accepted and normal in southwestern Ontario in a farming operation. I think it is pretty self-explantory, and that is the reason for the amendment.

Mr. Black: I have problems with this amendment and the one that follows it, in that it is an assumption that the minister is not a responsible person who would normally take into consideration all the factors one would in appointing people to a board.

Hon. Mr. Riddell: The chairman might agree with you.

Mr. Wildman: I did not suggest that at all.

Mr. Black: No, I knew you did not intend that. The point I wanted to make is that in most other legislation dealing with the appointment of members to a committee, we do not identify the kinds of members who should be appointed or where they should come from. The minister may want to appoint people who have farm experience or he may feel there is a need for some other kinds of experience on such a board.

Mr. Villeneuve: Like teachers?

Mr. Black: Possibly teachers might be a valuable addition. We might even have people who have some environmental background who could be an asset to such a board.

Mr. Wildman: We might have people who have a municipal background.

Mrs. Stoner: I think this is covered in an amendment I intend to move to section 7, which adds the prescribing of the composition of the board to the regulations, which then allows the minister to appoint appropriate people.

Mr. Wildman: The minister and I have had this exchange on a number of occasions. I really dislike even widening the suggestion of doing things by regulation. Far too much legislation in this province is done by regulation. It is our job to pass laws in this province. We are the legislators, not bureaucrats who write regulations.

Mr. Chairman: We are dealing with your amendment, not a future one by Mrs. Stoner.

Mr. McGuigan: I have a question to legislative counsel. If we put in this rider that they have to be selected from the various regions of Ontario, if from time to time someone resigns or if in someone's mind you do not have the best geographic situation , are your rulings liable to be challenged; if you did not have regional representation is that any sort of a problem?

Mr. Williams: The one thing we did not get into when we drafted this is exactly what the regions might be. I must admit it is somewhat vague, but the intention was to get the members' ideas and the thoughts of members of the committee--

Mr. Wildman: Certainly the intention is to have people from eastern and northern Ontario as well as southwestern Ontario.

Mr. McGuigan: I do not have any problem with that, but I just wonder if it is getting us into problems where we would have to deal with—

Mr. Wiseman: There are some good people in western Ontario.

Mr. McGuigan: Does legal counsel have any comments on that?

Mr. Dombek: Unfortunately, I find the wording somewhat vague. I am not too sure what various regions of Ontario are from a legal perspective.

Interjections.

Mr. Dombek: I have had occasion to travel from Red Lake to Windsor in another life.

I think the difficulty would be in defining what the various regions are and I think it could lead to some challenge. Let's say the board had representation—let's say it was dealing with a problem from eastern Ontario and it had people who were sitting on the board who were not from that region, or maybe not entirely from that region. It could create some problems from a legal perspective.

Mr. Wildman: I would just make a response to that. First, I would hope that the board—if it is hearing an issue in eastern Ontario—would have someone from eastern Ontario on the board. I would object greatly if it did not. The suggestion that the board might be open to criticism if it heard something in eastern Ontario and did not have someone from eastern Ontario is exactly correct. That is exactly the problem. That should not be the case; that is why this is put in here.

Mr. Dombek: If I can clarify: what I was trying to say was that the way the amendment is worded my interpretation would be that the board, whenever it heard any particular problem—wherever it was situated—would have to have representation on that board from each of the various regions of Ontario, whatever they may be. Now that may not be the most appropriate thing in each of the situations. That is the point I was trying to get across.

Mr. McGuigan: From what I have heard, I would be inclined to vote against the amendment.

Hon. Mr. Riddell: I think whenever we pass legislation, it not only has to be fair but it has to be perceived to be fair. To put "qualified" in there may well mean in the thinking of some people that it should be all farmers who are on this board. I just do not want any legislation that would allow a minister to stack a board, or almost dictate to a minister that he has to stack that board. I say leave it to the minister's discretion. We will certainly appoint the right people to the board. We will certainly appoint people representing the region in which the complaint has been levied and all the rest of it. I say leave it to the minister and do not pass legislation that would leave one with the belief that the minister is stacking the board.

Mr. Villeneuve: I would like to see a little more precise definition of "qualified". There is an amendment that follows, sponsored by yours truly, that says five years of experience as an owner-operator—

As a former worker in the employ of the Farm Credit Corp., it is pretty easy for some young guy with all sorts of very expert knowledge out of university to come along and tell a farmer who has been going strong for 15 years and is now in some financial trouble: "Hey, why did you do all this? If you had been smart you would have done better." Well, at the time it was the right thing to do.

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That experience cannot be purchased. The minister talks about stacking a board. Well, there is stacking and there is stacking. I firmly believe we have to have some people there who have walked a mile in that farmer's boots or ridden a mile on his manure spreader.

Mr. Dietsch: Do not judge until you walk a mile—

Hon. Mr. Riddell: I do not think you should have any fears that way. Certainly there are going to be farmers on that board who have experience.

But let us use the example of the bird-banger situation, the problem we ran into here not that long ago. Maybe a good person on the board would be a fruit and vegetable specialist who has had years of experience in that field but has never operated a farm in his life. Maybe that person on the board would be far superior as opposed to having a farmer on the board. That is why I say I think you have to leave it to the discretion of the minister as to who would be the appropriate people to put on the board to listen to these complaints.

If we accepted Mr. Villeneuve's amendment, then we would not be able to put this fruit and vegetable specialist on the board who probably has far more experience in controlling pests and what not than the farmer does.

Mr. Chairman: There are a couple of people who have indicated they still want to make comment. Can we be very brief, because this calls for the question?

Mr. Tatham: I think we have to try to determine where the problems are. In our county we have 600 dairy herds. Perth has probably more pork production than anywhere else. I think we have to consider this type of operation, particularly for smells and manure. I think the minister would be very fair in his appointments around the province.

Mr. Dietsch: I think the minister has explained precisely the need for some latitude as to appointments to the board. It is quite clear that it will from time to time be necessary to appoint people who have expertise all the way around. I do, however, feel it is very important that people with knowledge in the field are appointed to this kind of board and I have expressed that concern. It is fair to say that any minister who understands his ministry in this particular area is going to make darned good and sure there are people knowledgeable in agriculture appointed to this board.

Mr. Wiseman: I just feel that what my colleagues have said in their amendments makes some sense. We look and see what happened with the Ontario Drainage Tribunal, which was made up of farmers, even though the lawyer on that also runs a large dairy herd. In my estimation, and I think the minister will agree, the drainage tribunal is working well; a lot better than when we had the judges who knew nothing about drains looking after it in the different areas.

I think the Land Compensation Board is another one where they added some farmers or some rural people when they were dealing with agricultural land so they would know a little about the price ranges which were equitable.

I am afraid, and I think the minister has been in cabinet long enough to share my reservations in this regard, that if you do not say "people with some agricultural background," some of your colleagues who have some deadwood they want to get on a board will push like heck for the minister to accept that person.

Mr. Black: You appointed all those Tories.

Mr. Wiseman: If you can hang your hat on a stipulation that they must have these qualifications it makes it a lot easier. I know the minister knows what I am talking about here, because I saw the smile on his face. That is one reason, when I was looking at boards and commissions, that I gave him a chance so that after six years of having someone sitting on a board he can change them and get them off in a nice way.

Mr. Chairman: Are you ready for the question on subsection 3(1), Mr. Wildman's amendment?

All those in favour of Mr. Wildman's amendment? Opposed? It is defeated.

Motion negatived.

Mr. Chairman: There is another amendment on subsection 3(1) from Mr. Villeneuve.

Mr. Villeneuve moves that subsection 3(1) of the bill be amended by adding at the end thereof "each of whom has at least five years' experience as an owner or operator of an agricultural operation and who is selected from the various regions of Ontario."

Do you wish to speak to that?

Mr. Villeneuve: It has been pretty well discussed. You may call it stacked, you may call it what you want; however, we are talking about right to farm. We are talking about protecting farmers, and I well recall the minister's statement that there may be a farm specialist who has never owned or operated a farm. But what if there are five, or seven of those—the board is made up of those? I still want to see farmers protecting their industry and that is why I support this amendment.

Mr. McGuigan: I would like to use the example that Mr. Wildman used, and I think he was talking about Del O'Brien. I do not think you would want to put any restrictions or qualifications that might prevent a person like Del O'Brien, who all of us from all parties agree has been a tremendous person as head of the Drainage Tribunal.

As soon as you come in with these qualifications you start narrowing down the field and you get those restrictive elements coming in. As to the propriety of the thing, the greatest tools that you have are question period and estimates and all of those sorts of things. The minister can be under criticism any time if he runs an improper board. I just hate to see qualifications that might keep out some very good people, and Del O'Brien might be an example.

Mr. Villeneuve: He would qualify under both.

Mr. Dietsch: I think Mr. McGuigan outlined it, and I think the point is that you cannot weight a board all different ways. I do not think that serves with justification the type of system we want to have.

Mr. Chairman: Okay. Are there any other comments on Mr. Villeneuve's amendment to subsection 3(1)?

All those in favour of Mr. Villeneuve's amendment, please indicate.

Opposed?

Motion negatived.

Interjections.

Mr. Chairman: Order. You are being asked to vote here.

Shall subsections 3(1) to 3(6) carry as in the bill?

Carried.

All right, we move to subsection 3(7).

Mr. Wildman moves that subsection 3(7) of the bill be amended by striking out "one" in the first line and inserting in lieu thereof "two" and by striking out "member" in the second line and inserting in lieu thereof "members."

Mr. Wildman: This is a question of the quorum, which was raised by the Ontario Federation of Agriculture in its presentation. They were concerned that a quorum of two might in fact be deadlocked. If you have an even number on the board and the two of them cannot agree on an issue, you might have a deadlock, whereas if you have three you have the option of a majority vote on the board.

Mr. Chairman: Pardon me. We have a case here of three identical amendments. It is hard to believe that there is a need for a prolonged debate on it. Mr. Wildman's was dealt with first because it was first received.

Mr. Wildman: I move that we combine all three.

Mr. Chairman: Shall we move all three amendments? They would be identical.

All those in favour of the amendment to subsection 3(7) as moved by Messrs. Wildman, Mr. Villeneuve and Mr. Dietsch?

Opposed?

Motion agreed to.

Section 3, as amended, agreed to.

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Section 4:

Mr. Chairman: Mr. Wildman moves that clause 4(1)(a) of the bill be

amended by striking out "on the request of an aggrieved person" in the first line and inserting in lieu thereof "on the written request of any person."

Do you wish to speak to your amendment?

Mr. Wildman: Yes. The reason for this amendment is that, again as was proposed by the Ontario Federation of Agriculture president Brigid Pyke and her colleagues, the designation "aggrieved" might limit the option of a farmer who anticipated there might be a concern raised about his operation but who himself is not aggrieved taking a matter to the board for adjudication or mediation as sort of a pre-emptive approach, rather than waiting until somebody feels aggrieved and takes the matter to the board at a later date, after the operation has been going for a while.

It is just to give a farmer who would not be judged to be aggrieved himself the option of bringing the matter before the board, in a manner of speaking to clear the air.

Mr. McGuigan: Mr. Wildman has a talking point that it seems to me could be overcome. What I would be afraid of if his motion passed is some environmental zealot would go running around the country pressing cases. I have great sympathy for environmentalists, but in any movement there are people who are either on the far left or the far right, and I would certainly be afraid of that aspect of the situation here.

Not being a lawyer I am not very informed on these matters, but I certainly know in dealing with constituent cases we often have to prove that a person, even as an MPP, has the right to represent that person. We all get confronted with that, we get consent forms and so on.

I understand the intent of this motion, but I think the member brings us into other areas. I do not have an answer at the present moment for a farmer who might want to pre-test a situation. I think you can go to the Supreme Court and you can ask it for a preruling. I do not think there is anything in here that stops a person from doing that.

Mr. Chairman: Any other comments on Mr. Wildman's "ecofreak" amendment?

Mr. Black: I want to hear a comment from the minister.

Hon. Mr. Riddell: Well, I believe that matters should only come before the board when someone has a complaint about a certain farm practice. I just cannot see any benefit to expanding access to the board to any person. I just cannot believe that a farmer would go to the board and ask the board if his farm practice is one that will receive favourable response by all living in the neighbourhood. I just cannot believe that a farmer would want to do that. Even if the farmer did do that, any future complainant will not know what the board told the farmer. It may not even be connected with the subject area that a future complainant may want to go to the board about.

Why a farmer would go to the board to complain about his own operation or to ask the board--I mean, if he wants to find out whether he is conducting normal farming practices we have all kinds of staff out there. He can go to the ag reps, the assistant ag reps, the soil specialists--you name it. We have all kinds of staff out there who will tell this farmer whether he is conducting normal farming practices. To have him go the board, to my way of thinking, is ridiculous.

Mr. Chairman: Okay, I think the minister is opposed to it. Mr. Villeneuve.

Mr. Villeneuve: With all due respect to what the minister has said, I have seen on many occasions where people who are employees of the Ministry of Agriculture and Food did not agree. Severances are one matter, and there are a number of other areas.

The board, I believe, will be sitting independently of the Ministry of Agriculture and Food, and there is validity to such views as "ounce of prevention is worth a pound of cure." Without bringing a complaint against himself, he could seek a ruling, some advice from the board.

We are not talking about the Ministry of Agriculture and Food here, Minister. With all due respect, you have some very capable people, but I lock horns with them on occasion. I do not always win but I do not always lose, and I think that is what we are talking about. I would like to see that in there.

Hon. Mr. Riddell: I am not convinced the board would listen to that type of thing. The board is established to listen to complaints. If a farmer were to come to the board and the board were to ask the farmer "What is your complaint?" and the farmer said "I don't have any," then I think the board would say "You're wasting our time." That is not the reason the board was set up. The board was set up to listen to complaints.

Mr. Villeneuve: With all due respect, with this amendment the board would say, "We will visit your property whenever we're in the area adjudicating on another situation of complaint and we will give you our opinion as to whether you have everything that qualifies here or this would be an area"—I sat in this morning with the commissioner on conflict of interest and he told me on a couple of suggestions I put to him, "Yes, you could be in trouble if you tried something like that." There is nothing wrong with that.

Mr. Black: I hope you listened.

Mr. Villeneuve: It is you guys who have a problem listening.

Mr. Wildman: I would like to ask legislative counsel if he could give us, as nonlawyers, some understanding of what "aggrieved" means—or ministry counsel; either one, it does not matter to me.

Mr. Williams: I must admit I was not party to coming up with that particular phrase. Unfortunately, it is not my bill, so I was not in at the beginning of this. I do not know why that particular phrase was used.

Mr. Dombek: We used it so it would be limited to those people who had an actual complaint against the farm operation.

Mr. Williams: If I could make one other comment on the other side of the coin. Although you can, in legislation, open it up to whomever you want by saying "any other person," you could leave the courts in a bit of a quandary in certain circumstances as to whether or not an action would be a frivolous action. Somebody could come along and bring something before the board that really does not reflect a true interest in the matter covered by the legislation, and the courts could be left in a quandary as to whether it is really a proper action or a frivolous action. If you use the word "aggrieved," I think you eliminate that problem.

Mr. McGuigan: I am not in total agreement with the minister. I think if you cast your mind about, there might be a situation where a farmer came in with an innovative technology and he wanted to ask the board how it would fly. If you try to get that through this amendment, it gets into all sorts of other troubles. I am wondering what the ministry would think about a further amendment that might take care of that particular problem, because I think with innovation technology—

Hon. Mr. Riddell: No matter what the board rules, if this farmer went to the board to try to ascertain whether this innovation was following lines of normal farming practices, it does not mean that somebody in the neighbourhood could not go to the board the following week and complain about that very practice. I do not see any point in the farmer going to the board to find out whether it happened to be a normal farming practice, because the first thing you know the complaint is going to be laid anyway. What has the farmer accomplished?

Mr. Williams: There is nothing to prevent the board from holding its own inquiry into a matter in any event. I think the words here say: "including the power, (a) on the request of an aggrieved person, to inquire...." and to make such other inquiries under clause 4(1)(b). So I am not sure the farmer could not, in any event, go to the board and ask for clarification.

Mr. McGuigan: That is what I said in my first remarks, that I did not see anything there that said—

Mr. Williams: It is not necessarily saying the words.

Mr. Villeneuve: The farmer could accomplish corrective surgery to meet board requirements.

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Mr. Chairman: That is the point being made now by Mr. Williams, that because it says "including the power on the request of an aggrieved person," that it would include that. Any further discussion?

All those in favour of Mr. Wildman's amendment to clause 4(1)(a)? Opposed?

Motion negatived.

Section 4 agreed to.

Section 5:

Mr. Chairman: On section 5, we have an amendment to subsection 5(1).

Mr. Villeneuve moves that subsection 5(1) of the bill be struck out and the following substituted therefor:

"(1) Where a person is aggrieved by any odour, noise or dust that results from an agricultural operation, the person shall apply in writing to the board for a determination as to whether the odour, noise or dust results from a reasonable farm practice"—I guess that would now read "normal" farm practice—"and no action or proceeding shall be commenced with respect to the odour, noise or dust until the matter has been finally dealt with by the board under this section."

Mr. Villeneuve: This effectively would put all complaints through the board as a place of first recourse, pure and simple. I sat on the Ontario Farm Machinery Board for a number of years and I think we prevented many court actions through negotiation and discussion with aggrieved people, with dealers in farm equipment who were not necessarily happy but were caught in the middle, and with the manufacturers who did not want to live up to what they were supposed to. I think this would pre-empt any end-run around the board and would make the board an effective place to have negotiation and arbitration occur.

Mr. Black: Could I have clarification? Does this amendment in any way put us in conflict with section 2, which we have already passed? It does specify some conditions under which—I would like legal opinion on this. We have already passed a section which suggested there are certain acts that are exempt from this law and then we—

Mr. Villeneuve: I think this bill is subject to the farmer conforming with all those different acts.

Mr. Black: Yes.

Mr. Villeneuve: Therefore, if he conforms with all of those he has to go through this board.

Hon. Mr. Riddell: The procedure whenever there is a complaint is, first, to contact the Ministry of the Environment. We do not want to preclude that. I have a feeling this amendment would preclude the Ministry of the Environment going out and assessing the complaint. If they find it has to do with normal farming practices, they turn it over to the Ministry of Agriculture and Food.

Mr. Villeneuve: Not necessarily.

Hon. Mr. Riddell: First, they will try to resolve it. Representatives of the Ministry of the Environment, when they appear on the scene will try to resolve the problem. If it is a case of the farmer having put his manure pile too close to the neighbours' house or whatever it may be, the ministry could recommend to the farmer that he perhaps move the manure pile. Maybe that is not a good example to use, but—

Mr. Villeneuve: We are talking about noise, odour and dust. We are limited to those three things here. That is what we are talking about.

Hon. Mr. Riddell: That is right, but we do not want to preclude a resolution to the problem before the board ever becomes involved. I have a feeling that a lot of these matters will be resolved before the board ever gets involved in it. My guess is that you probably will not have more than six cases go before a board with this procedure. Where the Ministry of the Environment first appears on the scene, if it is a case where runoff is getting down into a stream and killing fish and what not—

Mr. Villeneuve: That has nothing to do with this—

Hon. Mr. Riddell: Okay, that is dealt with as an environmental matter. But if it is a matter that pertains to noise, odour and dust, then it is turned immediately over to my ministry. My ministry will endeavour to resolve the problem, but that does not stop the complainant from pursuing it

with the board. If the complainant still feels we have not been able to resolve the problem, that complainant can take the matter to the board.

Furthermore, this really ties the complainant into writing to the board. Maybe the complainant does not want to pursue it. Maybe after both the Ministry of the Environment and the Ontario Ministry of Agriculture and Food have appeared on the scene, the farmer will have taken steps to rectify the situation. Why would you require that the complainant pursue it by writing to the board? The complainant may say, "No, I am satisfied and I am not going to pursue it any further." That is why we think "may apply" rather than "shall apply" is the proper way to go.

Mr. Chairman: Before we get too mired in this: Mr. Williams, perhaps you could give us--

Mr. Williams: I have talked to legal counsel for the ministry. I think we are both in agreement that it could raise some problems of interpretation if it went before the courts and they had to try to work out this particular section. In light of what section 2 says now, there could be some doubt as to how you would proceed under those four pieces of legislation.

Mr. Chairman: Okay. What I was seeking was some advice as to whether or not it is in direct conflict with section 2, which has already been passed.

Mr. Williams: That is what I said.

Mr. Chairman: You believe it is?

Mr. Williams: Yes, I think it is.

Mr. Chairman: If that is the case, then I really must move it out of order, if it is in conflict with a section of the bill already passed. All right, we rule that amendment out of order.

The next amendment is also to section 5.

Mr. Villeneuve moves that section 5 of the bill be amended by adding thereto the following subsection:

"(3a) The board shall hold the hearing in the same locality that the agricultural operation that is the subject matter of the determination is located."

Mr. Villeneuve: Effectively, we are having the hearing where the problem is, so that the board members and whoever is interested would be able to have a look at the problem first hand, discuss it with the people and then be in a position to assist in formulating a decision.

Mr. Chairman: Are there any comments on that? I have Mr. Wildman and Mr. McGuigan.

Mr. Wildman: I am in agreement with the amendment. It seems to me that the whole purpose, or at least one of the main purposes of this bill, is to avoid the expense that had previously been experienced in going to court. One of the ways of avoiding expense, as well as time being wasted and so on, is to avoid travel. It makes sense to me that if you have a problem in Belleville your board sits in Belleville. Rather than having the board sit some other place and having the parties who are interested travel to the board, the board should travel to the parties.

Mr. McGuigan: Again, I guess the idea on the face of it is appealing, but again it gets specific and limits you in your operations. There may be circumstances where you could not follow that practice. I just cannot think of what circumstances there might be, but you certainly limit yourself. I think perhaps lawyers could advise us, but you know you often read about them saying, "You cannot have a fair trial here because all of the people are too close to it." So they move the trial away some place. Now that may not be a factor in the type of thing we are dealing with, but again you limit yourself by being specific where it seems to me the best law is flexible.

Hon. Mr. Riddell: The board is not unlike this committee. It sets its own agenda. It seems to me that when I first came into the committee hearings this afternoon I heard you talking about travelling somewhere for a hearing of some kind. The board has the power under the proposed legislation to make its own rules, including its own administrative decisions. It is certainly the intent of the legislation to have the board travel to the region where the complaint is and not have have the parties involved of necessity come to Toronto. I think you have to leave some discretion with the board.

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Mr. Wiseman: I agree with my colleague. I cannot see why anyone would disagree it should be out there where the complaint is. In all fairness to my colleague Mr. McGuigan, I do not think it is the same as some of the court cases to which he referred as an example. I do think the hearing should be out there where the problem is and the situation can be viewed first hand. An on-site inspection can probably help a lot more with decisions.

The Ontario Municipal Board used to make people go to Ottawa from my area for hearings. I think they work out much better now that they go right into the area where the problem is. It works a lot better. They may have to wait a little longer for a hearing, but in my opinion, and from what I have had in feedback, it is much better.

Mr. Villeneuve: You will notice that it does not mention "on site," although I mentioned that on site would be preferable, but it says "in the same locality that the agricultural operation...is." A locality is a broad region. It is to try to facilitate dealing with the situation in the area where the problem is.

Mr. Chairman: Any further comments on Mr. Villeneuve's amendment?

Hon. Mr. Riddell: Just two comments: There will be a memorandum of agreement between the board and the minister. There probably would be included in that memorandum of agreement an indication that the board would travel to the locale. However, it may be more convenient for both the complainant and the farmer to come to some central area in the region, maybe a larger urban area or a city, rather than hold it in the town hall right in the area. Maybe it would be preferable to both the complainant and the farmer to come into another area. I do not think you want to hamstring the board too much in that respect.

Mr. Villeneuve: I do not think there is any hamstringing at all, Mr. Minister. "Locality" is a pretty general and broad outline. Effectively, it would say, "If you have a problem in Chatham, the Kent-Essex area would be the locale." That is my definition; I do not know whether that is right or wrong.

Mr. Dietsch: I understand Mr. Villeneuve's interpretation as to

locality, but as the minister has pointed out, from time to time it may be necessary to move to a more convenient location, as agreed to. Is there anything in the bill that pre-empts the board from meeting in the locality now? As I understand the routine with other boards that are already appointed, they meet in different localities around the area. Would this not be the same? There is nothing in the bill that pre-empts the board from saying, "It is a Chatham complaint. We will meet in Chatham." Is there?

Mr. Williams: I am not sure there is anything in the Ontario Municipal Board Act that specifically says the board has to sit in the locality, but I know the board does. There is nothing preventing this board from sitting wherever it decides.

Mr. Dietsch: I guess my point is that it is covered within the terms of the bill as it presently exists. It is currently in practice with a number of other boards that are in the system now.

Mr. Chairman: Any other comments on Mr. Villeneuve's amendment on subsection 5(3a)? Ready for the question?

All those in favour of Mr. Villeneuve's amendment? Opposed? It is defeated.

Motion negatived.

Mr. Chairman: Can we keep going on the amendments on section 5 and then deal with it in its entirety? The next one is by Mr. Wildman.

Mr. Wildman: My amendment would add another subsection, if you want to carry the rest as it is written.

Mr. Chairman: All right. Shall section 5, subsections 1 to 6 inclusive, carry?

Agreed to.

Mr. Wildman: I have a new subsection 5(7). I note that the copy in the explanatory note at the side says "odification of arm practice." This is supposed to be "modification of farm practice."

Mr. Chairman: Mr. Wildman moves that section 5 of the bill be amended by adding thereto the following subsection:

"(7) Where the board makes an order under this section, a person appointed under subsection (6) may advise the respondent on methods of modifying the agricultural operation of the respondent so as to bring it into compliance with normal farm practice."

Mr. Wildman: The reason for this is that it is conceivable that under the bill as we have so far dealt with it, the board might make an order to a farmer and say: "You should do this. You have to rectify this particular problem." All I am suggesting here is that the board then could provide some assistance to the farmer in complying and have one of its people give him some advice about how he could come into compliance.

Frankly, I think this would be a very useful function of the board if it were prepared to do this kind of thing, to assist farmers to comply with what the board determines to be a normal farm practice. It might save the farmer

considerable expense in some cases. I hope the amendment might be accepted.

Mr. Tatham: I certainly concur that it is a thought, but I wondered: 100 years ago we had a chap up in north Oxford who brought in something to do with agriculture. We have established around the province people who are qualified, and I would hope that agricultural people would be doing this in their own right, day in and day out. I think you are asking too much of the board to have farmers who are qualified—You would either have to add somebody to the committee or have farmers who were qualified, or perhaps an ag rep available, to tell people what to do.

Mr. Wildman: Could I just answer that? In some complex cases, and I do not imagine in very many, it seems to me that the board, in order to make a decision, is going to have to get expertise, it is going to have to get expert advice from somebody. It might be a pesticide spraying issue, for instance, and the board might have to get expert advice. All I am saying is that if the board has to get that expert advice, then that expert advice should also be extended to the farmer if the board makes an order.

Mr. McGuigan: If I can coin a phrase, there is nothing unreasonable about this amendment; but again it raises technical problems. If a farmer has received advice from a member of the board and then later his neighbour raises a complaint against him which has to be heard by the board, you can see the farmer waving his advice, whether it was written or oral, raising the point: "I had a prejudgement that said this is a proper thing to do." I think it comes down to requiring the board to be both judge and jury.

I think there are some problems with that. As my colleague has suggested, there are so many specialized areas we can go to get advice that it would be hard for the board to have all that specialized advice at hand. I know the member is trying to be helpful, but I think it raises problems that create difficulties.

Hon. Mr. Riddell: It was not the intent of the legislation to set up yet another farm advisory service. As I mentioned earlier, we have tremendous service out in the country now by way of ag reps, assistant ag reps, ag engineers, crop specialists, soil specialists—you name it, they are all out there. I do not see any need to set up another farm advisory service. Might I refer you to clause 5(3)(b), which I think accomplishes what Mr. Wildman wants.

"(3) The board shall hold a hearing and shall...

"(b) order the owner or operator of the agricultural operation to cease the practice causing the odour, noise or dust if it is not normal farm practice or to modify the practice"—this is what I want to underline—"in the manner set out in the order to be consistent with normal farm practice."

In other words, the board will in the order tell the farmer what he should do. Really, that accomplishes what you want to do.

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Mr. Wildman: I understand what the minister is saying. All I am saying is that you might have written down on paper and issued an order on how to change the operation to be consistent with a normal farm practice. Actually implementing that order might not be as easy as it appears on paper. The farmer would also seek the advice, I am sure, of the local agricultural representative or someone from the agricultural office. I want to emphasize

that I do not see this as a regular thing; I do feel, however, that in very complex and unusual cases this kind of thing could be done.

Mr. Villeneuve: I, too, can cite some instances where an inspector from Ontario Hydro will not hook up; although the plans were laid by Ontario Hydro, an inspector comes in from Ontario Hydro and it does not meet his qualifications. The Ministry of the Environment is terrible in doing things like that: "Submit your plan and we'll tell you six months later whether it fits."

If you have a problem, suggest a cure; that is what this is oriented towards. It is leaving it to some degree with the board. They establish that there is a problem, not normal farming practices being followed when handling noise, odour or dust. Be positive on this one, because they may be called in again and may still not qualify.

Again, we would hope the ministry people would be on the same wavelength as the board in corrective measures. That is the area of concern I have, because I have seen bureaucracies, the Ministry of the Environment waiting six months to approve a waste disposal system. In the meantime, the guy is having it pumped every day and the bureaucrats are not giving their blessing to it. I certainly do not want to see agriculture get caught in a situation like that.

Mr. McGuigan: I hear what my colleague is saying. I think I am correct in saying that no matter what the farmer does, he does not reach a point where he is not going to be challenged. Even though he might comply today with the order, I do not think there is anything here that stops a person from challenging six months down the road, from saying this odour, noise or dust is not acceptable to me as a neighbour. I think I am correct in saying that. I have asked legislative counsel, and it seems we never reach a point where one cannot be challenged.

Mr. Wildman: That is not the purpose of the amendment. The purpose of the amendment is just to give advice and assistance to the farmer.

Mr. Black: I guess my concern would be that if we were to pass this amendment that might put the board in the position, having heard a complaint and given some advice on a solution, of then finding itself facing another complaint after that solution was implemented.

Mr. Villeneuve: Is this not legislation to protect farmers?

Mr. Black: I was thinking that the board could be in the position of having to rule against a previous ruling of the board.

Mr. McGuigan: It could be a different complainant, another person.

Mr. Wildman: The point of this amendment relates directly to subsection 5(6): "The board may appoint one or more persons having technical or special knowledge of any matter to assist the board in any capacity in respect of any matter before it." If the board needs, on some occasions, to get this kind of assistance, surely the farmer will.

Mr. Chairman: Are you ready for the question? All those in favour of Mr. Wildman's amendment, please indicate. Opposed?

Motion negatived.

Mr. Chairman: Mr. Wildman has another amendment. I assume this one is in order, even though the previous one was defeated, because the order refers to clause 5(3)(b). I am assuming that, otherwise it would not be in order.

Mr. Wildman: The number would change on this one.

Mr. Chairman: Yes, to subsection 7.

Hon. Mr. Riddell: Do I have a copy of that?

Mr. Wildman: Yes, you have a copy. You are looking at the Ontario Federation of Agriculture. You probably do have it if you are looking at that.

Hon. Mr. Riddell: Okay.

Mr. Chairman: Mr. Wildman moves that section 5 of the bill be amended by adding thereto the following subsection:

"(7) Every person who fails to comply with an order made under this section is guilty of an offence and is liable on conviction to a fine of not more than $500 on the first conviction and not more than $5,000 on a subsequent conviction."

Mr. Wildman: This is an amendment which was requested by the federation of agriculture in its presentation to the committee. Their argument is that you might, in fact, have a board make orders and then there is nothing in the bill that requires the person to comply with the order. In this case, you are giving the board some enforcement power, so the person knows that if an order is issued by the board, he should comply or he would be subject, on conviction—that is if he is taken to court—to a fine.

I do not like the idea of having to use coercion, and I do not imagine in most cases you would have to. I would hope that the board would settle most of its complaints through mediation and not even have to issue orders. But in those cases where it does have to issue orders, there must be some way to enforce those orders. If there is nothing in the bill that says how the person is going to be required to fulfil the order you may in fact have recalcitrant people who will just say, "To hell with this order, I am not going to implement it." In that situation, the federation suggested this was a way to go.

Mr. Black: I may be wrong, and I would appreciate the advice of legal counsel here, but it seems to me this board would operate under the Statutory Powers Procedure Act. Therefore, its rulings would be rulings of the Supreme Court and would have the effect of a Supreme Court order. I would like to hear whether that is correct or not.

Mr. Williams: It would be similar to a contempt of court. It is under the Statutory Powers Procedure Act. It is like an order of the court, in that it is an act of government.

Mr. Wildman: In response to that, I may need some help from legal counsel, but as a nonlawyer, in my understanding of what you have said there would be no limitation on the size of the fine.

Mr. Williams: I do not have a copy of the act.

Mr. Dombek: I have a copy of the act.

Section 19 of the Statutory Powers Procedure Act says: "A certified copy of a final decision and order, if any, of a tribunal...may be filed in the office of the registrar of the Supreme Court by the tribunal or by a party and, if it is for the payment of money, it may be enforced at the instance of the tribunal or of such party in the name of the tribunal in the same manner as a judgement of that court, and in all other cases by an application by the tribunal or by such party to the court for such order as the court may consider just."

There would be two situations, I would think, that could occur. The person being held in contempt by the Supreme Court could be either jailed or subject to a fine. The court would set the limit on the fine.

Mr. Wildman: I understand what you are saying, but then it is completely at the discretion of the court to set the limitation on the fine, and it could even send the guy to jail. Frankly, I do not want to send him to jail. I want him to be fined, if necessary, and I want to have limitations on that fine. I do not want to leave it to the discretion of the court.

Mr. Chairman: Mr. Williams, do you have something?

Mr. Williams: All I want to say is that although it is not necessary because it is covered in other statutes, that does not preclude you from putting something in this bill that would give you some parameters as to what fine you wanted to impose. That is what I think Mr. Wildman is saying.

Mr. Wildman: I do not want the guy to be subject to a jail sentence.

Mr. McGuigan: I am not sure how my point meshes with the Statutory Powers Procedure Act, but I point out that the Ministry of Agriculture and Food people will tell you that most of the complaints that they have on record are farmer to farmer.

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Say I have a farmer who runs his corn dryer all night—it might be on a rare occasion, but should he decide to run that contraption continually on rare occasions, I am going to have my bird-bangers over there aimed at his house shooting at the night owls; that is kind of a mutually exclusive—.

What I am saying is that, as a farmer, I do not want to be up against a $5,000 fine where I have not had the due processes of a court, a lawyer representing me, cross-examination and all of those good things.

Mr. Wildman: That is in there. It says "upon conviction." It says the board cannot levy the fine. The amendment says "upon conviction."

Mr. McGuigan: This is where I am perhaps in error and a bit confused on the matter. I want that point cleared up.

Mr. Wildman: He would have to be taken to court. You would have to go to court.

Mr. Williams: Yes.

Mr. Wildman: I think counsel agrees with me that this is the intent of the amendment.

Mr. Dietsch: I see this amendment as a bit in conflict with what we are trying to do. We are trying to protect the rights of farmers to farm, and yet here we are talking about penalizing farmers. I think the point the Ontario Federation of Agriculture representatives made was they were unaware of any mechanism to enforce, and it has already been pointed out here today there is a mechanism to enforce if need be. I think that addresses the point and we should move on with the good things that are in this bill.

Hon. Mr. Riddell: Mr. Dunn has two other points he would like to bring to your attention.

Mr. Dunn: I would only add that if a farmer fails to comply with an order, not only could that order be subject to enforcement, as mentioned by Mr. Dombek, but also, in essence, that farmer would not have his right to farm, because that practice would not be deemed to be a normal farm practice. Therefore, that neighbour could take civil action against him and he would have a weak defence. Furthermore, the complainant could go to the Ministry of the Environment and say this farmer is carrying out an abnormal, or whatever, farm practice and request the Ministry of the Environment to charge the farmer under the Environmental Protection Act, section 13, which deals with enjoyment of property.

I think with these three features there would be sufficient onus on the farmer to comply with a board order. He is wide open for civil action, he is wide open for charges by the Ministry of the Environment and he is wide open for enforcement of that board order through the Supreme Court. This is where we have been comfortable with the authority given to the board without the need for fines and penalities.

Mr. Wildman: The problem with what was just said, though, is that then the onus is on the neighbour to take civil action or to request the Ministry of the Environment to take action, whereas what I am suggesting leaves the onus on the board.

Mr. Dietsch: We are talking about someone who is doing something outside normal farming practices, forcing him to stop doing something that is outside normal practice. For us to worry about penalizing goes beyond that; I think we are talking here about protecting, not penalizing.

Mr. Chairman: Is the committee ready for the question?

Mr. Wildman: I just want to make one further response. We are in favour here of protecting farm practices that are normal, not abnormal. If someone continues in an abnormal operation, then there has to be some way to ensure that the person—

Mr. Dietsch: And there is.

Mr. Wildman: Yes, but then there is no limitation on the fine and he could even be sent to jail. Do you want him sent to jail?

Mr. Dietsch: If he is doing something abnormal?

Mr. Wildman: That is what legal counsel advised. Would you send a farmer to jail? Well, okay.

Mr. Chairman: Let's not talk about abnormal things that farmers do.

All those in favour of Mr. Wildman's amendment, please indicate.

Opposed?

Motion negatived.

Mr. Chairman: We already carried the previous subsections of section 5, so let us move on to section 6.

Section 5 agreed to.

Section 6:

Mr. Chairman: Any amendments or comments on subsection 6(1)? Shall 6(1) carry? Carried.

On subsection 6(2) there is a government amendment.

Mr. Brown moves that subsection 6(2) of the bill be amended by inserting after "act" in the second line, "the Pesticides Act."

Do you wish to speak to that?

Mr. Brown: I believe it is just a housekeeping amendment. It brings the Pesticides Act on to the same level as the Environmental Protection Act and the Ontario Water Resources Act and allows injunctions.

Mr. Chairman: Okay. Is there any discussion on the amendment? Are you ready for the question? All those in favour of Mr. Brown's amendment, please show. Opposed.

Motion agreed to.

Section 6, as amended, agreed to.

Section 7:

Mr. Chairman: We have an amendment.

Mrs. Stoner moves that section 7 of the bill be amended by adding after subsection 6(b), "(c) prescribing the composition of the board."

Mr. Wildman: That should be 7(b).

Mr. Chairman: You said 6. Do you wish to—

Mrs. Stoner: I am sorry, yes. The revision is to section 7 rather than section 6.

Mr. Chairman: Do you wish to speak to that?

Mrs. Stoner: No, it is fairly straightforward.

Mr. Chairman: Okay. is there any discussion on Mrs. Stoner's amendment? Any questions? Mrs. Stoner's amendment is carried.

Section 7, as amended, agreed to.

Sections 8 and 9 agreed to.

Title agreed to.

Bill, as amended, ordered to be reported.

Mr. Dietsch: Could I just make a point relative to the overall bill. During discussions and presentations before this committee there was some discussion with regard to decibel rating, in particular with regard to bird scarers. It is my understanding—I would like clarification from the minister—that there are no decibel ratings either within the confines of this bill, as I understand it, or in fact in anything to do with farming practices. Am I correct?

Hon. Mr. Riddell: I think the only place you will find them is in a model noise bylaw. That is all it is, a model.

Mr. Dietsch: It has nothing to do with the carrying out or the enforcement of right to farm legislation.

Hon. Mr. Riddell: Correct.

Mr. Dietsch: So tractors which operate with a rating higher than 70 decibels, etc. and all the discussion that went on in that regard, is really not pertinent to anything with respect to rights to farm. Am I correct?

Hon. Mr. Riddell: Yes.

Mr. McGuigan: Since this is the first bill the minister has carried, I would like to congratulate him on the speed, efficiency and sensitivity he showed to all members in passing this bill. I wish that all his bills passed as easily.

Mr. Wildman: I would concur, only with the caveat that the sensitivity did not include accepting any of our amendments.

Mr. Chairman: May I, on behalf of the committee, thank Mr. Riddell, Mr. Dunn and Mr. Dombek for their assistance today. Mr. Williams has gone, I see, but he was helpful as well. I would remind members that the next time we meet will be on January 4, when we will commence the estimates of the Ministry of Transportation and the Ministry of Culture and Communications.

Mr. Wildman: Have the critics been notified?

Mr. Chairman: Critics have been notified.

The committee adjourned at 5:28 p.m.

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